



# MANUAL TRANSMITTAL

Department of the Treasury  
Internal Revenue Service

4.8.11

MARCH 29, 2017

## EFFECTIVE DATE

(03-29-2017)

## PURPOSE

- (1) This transmits new IRM 4.8.11, *Technical Services, Fraud Program Responsibilities*.

## MATERIAL CHANGES

- (1) This is a new IRM that provides the procedures for the fraud program in Technical Services and outlines the knowledge required and responsibilities of the fraud coordinator and / or other Technical Services personnel assigned to assist with the fraud program. This section incorporates the procedures from IRM 4.8.2.10.3, *Fraud and Grand Jury Suspense*. Procedures related to fugitive cases along with the respective exhibit have been removed as a requirement for this program.

## EFFECT ON OTHER DOCUMENTS

This material incorporates IRM 4.8.2.10.3, *Fraud and Grand Jury Suspense*, dated 04/14/2015.

## AUDIENCE

SB/SE Technical Services employees.

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4.8.11

Fraud Program Responsibilities

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4.8.11.1  
(03-29-2017)  
**Program Scope and Objectives**

- (1) *Purpose.* This IRM section describes the procedures for the fraud program in Technical Services. Specifically, IRM 4.8.11 outlines the knowledge required and the responsibilities of the fraud coordinator and / or any other personnel in Technical Services assigned to work in the fraud program.
- (2) *Audience.* These procedures apply to Technical Services employees assigned to the fraud program.
- (3) *Policy Owner.* The Technical Services office is under Examination Operations, Field Examination.
- (4) *Program Owner.* Technical Services is the program office responsible for overseeing and working the fraud and grand jury suspense program for Field Examination.
- (5) *Contact Information.* To recommend changes or make any other suggestions to this IRM section, e-mail the author.
- (6) *Program Goals.* These procedures provide for the accurate and timely civil examination actions on tax and tax-related criminal cases as outlined in the sections hereafter.

4.8.11.1.1  
(03-29-2017)  
**Background**

- (1) Criminal cases are an integral part of the examination process and Technical Services is designated as the liaison between Field Examination and Criminal Investigation. Activities in this program include (but are not limited to) suspending the civil case during the criminal prosecution process, monitoring examination related conditions of probation after the prosecution, and ensuring appropriate civil actions at the end of the criminal investigation for both prosecuted and non-prosecuted taxpayers.

4.8.11.1.2  
(03-29-2017)  
**Authority**

- (1) By law, the Service has the authority to make the appropriate assessments related to fraud when cases have been successfully prosecuted and ensure the related issues to the case such as conditions of probation are appropriately resolved. The IRM is the source for the procedures for the Service to accomplish these tasks.
- (2) Technical Services serves in the role of liaison to help ensure the procedures in IRM 1.2.13.1.11, *Policy Statement 4-26 (Formerly P-4-84)* are followed appropriately.

4.8.11.1.3  
(03-29-2017)  
**Responsibilities**

- (1) The Director, Examination - Technical Services is the executive responsible for the fraud and grand jury suspense program. The detailed responsibilities are as outlined below in IRM 4.8.11.2 and thereafter.

4.8.11.1.4  
(03-29-2017)  
**Terms**

- (1) Audience - The employees responsible for taking action or who require knowledge about the program, process or activity.
- (2) Fraud coordinator - is the local Technical Services revenue agent reviewer assigned to complete the various required procedures for the fraud and grand jury suspense program outlined in this chapter.
- (3) Collateral record - the record maintained on ERCS only for monitoring cases or issues that are not controlled on AIMS.

- (4) Administrative investigation - a case where the prosecution recommendation has been made.
- (5) Grand jury investigation - a case where the case has been referred by CI for further investigation.
- (6) Suspense cases - cases that are involved in tax or tax-related investigations which are under the jurisdiction of the Department of Justice (DOJ) / or Assistant United States Attorney (AUSA).
- (7) Conditions of Probation - conditions order by the Court for the taxpayer when the criminal case is finalized.
- (8) Restitution-based Assessments - assessments ordered by the Court when the criminal case is finalized which represent the loss incurred by the government.

4.8.11.1.5  
(03-29-2017)

#### Acronyms

- (1) The table lists commonly used acronyms and their definitions:

Acronym	Definition
AD	Area director
AIMS	Audit Information Management System
ASED	Assessment statute expiration date
AUSA	Assistant United States Attorney
BOD	Business operating division
CI	Criminal Investigation
COP	Conditions of probation
CT	Criminal tax
DI	Discontinued investigation
DOJ	Department of Justice
ERCS	Examination Returns Control System
FTA	Fraud technical advisor
GM	Group manager
POD	Post of duty
PSP	Planning and Special Programs
SAC	Special agent in charge
SAR	Special agent report
SFR	Substitute for return
SNOD	Statutory notice of deficiency
SSA	Supervisory special agent



Acronym	Definition
TC	Transaction code
TM	Territory manager
TS	Technical Services

## 4.8.11.2 (03-29-2017) Technical Services' Duties

- (1) Technical Services (TS) has responsibilities to ensure that appropriate civil examination actions are taken on *tax* and *tax-related* criminal cases during the investigation, and after Criminal Investigation (CI) has closed their investigation. These include (but are not limited to) suspending the civil case, the assessment of criminal restitution, monitoring examination-related conditions of probation/supervision, and providing technical guidance to stakeholders regarding the policies and procedures of the fraud program(s).
- (2) These responsibilities require effective coordination with internal and external stakeholders to ensure the overall effectiveness of our servicewide fraud operations. Stakeholders include but are not necessarily limited to the following:
  - Examination (SB/SE, LB&I and TE/GE)
  - Criminal Investigation
  - BSA
  - National Fraud Program
  - Collection
  - Counsel
  - Appeals
  - Whistleblower Office
  - W&I
  - Disclosure
  - Taxpayer Advocate Service
  - U.S. Courts
  - U.S. Probation Office
  - Department of Justice.
- (3) In this IRM, the term “fraud coordinator” is the TS reviewer who is assigned to the fraud program. Certain administrative / clerical actions covered in this IRM may also be assigned / delegated to any appropriate TS personnel as determined by management.
- (4) The following references are supplemental guidance to this IRM relating to servicewide fraud operations which may directly and / or indirectly affect the TS fraud program responsibilities (this list is not all inclusive and is subject to change):
  - IRM 4.8.6 - *Criminal Restitution and Restitution-Based Assessments*
  - IRM 25.1 - *Fraud Handbook*
  - IRM 20.1 - *Penalty Handbook*
  - IRM 25.6 - *Statute of Limitations*
  - IRM 25.25.10 - *Frivolous Return Program*
  - IRM 25.26 - *Restitution*
  - IRM 4.10.6.2 - *Recognizing Noncompliance*
  - IRM 4.12.1 - *Nonfiled Returns*
  - IRM 4.23.9 - *Employment Tax Penalty and Fraud Procedures*

- IRM 4.25.7 - *Estate and Gift Tax Penalty and Fraud Procedures*
- IRM 4.71.25 - *Employee Plans (EP) Exam Fraud Procedures*
- IRM 4.90.15 - *Federal, State and Local Governments (FSLG) Fraud Procedures*
- IRM 8.11 - *Penalties Worked in Appeals*
- IRM 8.13 - *Closing Agreements*
- IRM 9.4 - *Investigative Techniques*
- IRM 9.5 - *Investigative Process*
- IRM 9.8 - *Scheme Development*
- IRM 9.9 - *Criminal Investigation Management Information System (CIMIS)*
- IRM 38 - *Chief Counsel Directives Manual - Criminal Tax*
- Servicewide Fraud Website - <http://sbseservicewide.web.irs.gov/Fraud/default.aspx>
- Criminal Investigation Website - <http://ci.web.irs.gov/>
- Financial Crimes Enforcement Network - <http://www.fincen.gov>
- Public Access to Court Electronic Records - <http://pacer.gov>
- LB&I Fraud Website - [http://lmsb.irs.gov/pa/cent/fraud/fraud\\_home.aspx](http://lmsb.irs.gov/pa/cent/fraud/fraud_home.aspx)
- SB/SE Fraud Website - <http://mysbse.web.irs.gov/examination/tip/fraud/default.aspx>
- Technical Services Fraud SharePoint Website - <https://organization.ds.irsnet.gov/sites/SBSEfeTS/SME/Fraud/SitePages/Home.aspx>
- TE/GE Fraud Website - <http://tege.web.irs.gov/article.asp?category=job&title=atat-fraud-coordinators&path=/my-job>

4.8.11.3  
(03-29-2017)  
**Accepting Cases Into  
Suspense**

- (1) This subsection focuses on the policies and procedures to follow when cases are sent to TS for acceptance into Fraud and Grand Jury Suspense.

4.8.11.3.1  
(03-29-2017)  
**Overview of Notices  
From Criminal  
Investigation**

- (1) The type and timing of the actions during the criminal investigation determine when the case should be sent to TS for suspense of any civil examination case. Two events trigger the action of sending a case to TS for suspense. Refer to IRM 4.8.2.10.3.1, *Why Cases Are Placed in Fraud and Grand Jury Suspense*. Triggering events are 1) CI recommends prosecution of the taxpayer or 2) grand jury investigation is initiated. This subsection explains the three primary notices CI is required to send to TS (and Examination as applicable) to notify Examination of critical stages reached in the criminal investigation process and to provide a brief overview of the steps taken when these notices are received in TS.
- (2) CI is required to determine if any civil action is being taken or planned, and to notify Compliance (Examination and Collection) when they open an investigation. Once a Title 26 and / or tax-related Title 18 investigation is initiated (numbered) and TC 914 codes are placed on the appropriate master file modules, Form 14584, *IRS - Criminal Investigation - Check for and Suspense Civil Activity Notification*, is prepared by CI and forwarded to TS to determine if any civil action with respect to the target and / or any related entities is currently in progress. CI will send Form 14584, to TS via secure e-mail to notify SB/SE Examination of the initiation of criminal proceedings and to verify current and prior civil activity on the criminal suspects and related returns. Refer also to IRM 9.5.1.2.1, *Procedures in Financial Investigations*, IRM 9.5.2.6.3, *Civil Actions During the Grand Jury Investigation*, IRM 25.1.4.3.3,

*Required Communications*, and IRM 25.1.5.2, *Grand Jury Suspense*. CI is also required to send this form to other functions / Business Operating Divisions (BODs). See IRM 4.8.11.3.1 (2)(b) below.

- a. TS will confirm if there is an open examination and respond via secure e-mail to CI accordingly. Both positive and negative responses are required.
- b. When there are open examination controls, the reviewer should send the notification from CI to the Examination manager via secure e-mail informing them that the taxpayer is under criminal investigation and at what point the file should be forwarded for suspense in TS. The CI special agent and / or supervisory special agent should be given a courtesy copy on the e-mail transmittal to Examination. It is recommended to also copy the area FTA so they can provide additional guidance to Examination.

**Note:** Field Examination will keep the civil case and coordinate all civil actions with CI until determined the civil case should be closed or sent to TS for suspense.

- (3) CI must notify Compliance when the criminal investigation is referred to the DOJ and / or AUSA. CI will send the *Notice of Department of Justice Referral* memorandum to TS and other required functions / BODs via secure e-mail. This notification should clarify that the investigation was referred for prosecution recommendation (administrative investigation) or is referred for further investigation (grand jury investigation). This notification is the event that requires the civil examination case to be sent to TS for suspense. Refer also to IRM 4.8.11.3.2 and IRM 25.1.3.4(7), *Accepted Criminal Referrals*.
  - a. TS will confirm if there is an open examination and respond via secure e-mail to CI accordingly. Both positive and negative responses are required.
  - b. When there are open examination controls, the fraud coordinator should send the notification from CI to the Examination manager via secure e-mail informing them that DOJ now has jurisdiction and the civil examination must be placed into suspense. The e-mail should include instructions on how to prepare the case for suspense and transferring to TS. The CI special agent and / or supervisory special agent should receive a courtesy copy on the e-mail transmittal to Examination. It is recommended to also copy the area FTA so they can provide additional guidance to Examination.
- (4) CI will notify Compliance when the criminal investigation is closed (i.e., prosecution completed, discontinued, or declined for prosecution). CI will send Form 13308, *Criminal Investigation Closing Report (Tax and Tax Related Only)*, to TS and other required functions / BODs via secure e-mail. If the case has been discontinued, CI will also provide the DI report narrative or Form 10273, *Discontinued Investigation Report*, to TS via secure e-mail.
  - a. For Examination-related COP and restitution cases only, TS will acknowledge receipt of the Form 13308 via secure e-mail and follow the procedures under IRM 4.8.11.6.2.2.

4.8.11.3.2  
(03-29-2017)

**When Cases Are  
Transferred to Fraud and  
Grand Jury Suspense**

- (1) CI notifies TS when jurisdiction of the criminal investigation has been transferred to the DOJ using the *Notice of Department of Justice Referral* memorandum. This notification should clarify that the investigation was referred for prosecution recommendation (administrative investigation) or is referred for further investigation (grand jury investigation).
- (2) After confirming there is an open examination, the fraud coordinator should send the *Notice of Department of Justice Referral* memorandum via secure e-mail to the assigned examiner and the examiner's manager informing them that the civil case file(s) and controls should be forwarded for suspense to TS. This notification to Examination should include instructions on how the case should be prepared for suspense. It is recommended to include the FTA as a recipient of the e-mail notification to Examination so they may provide additional guidance.
- (3) For more information, refer also to the following
  - IRM 4.8.11.3.4
  - IRM 9.5.1.2, *Administrative Investigations*
  - IRM 9.5.2.6.3, *Civil Actions During the Grand Jury Investigation*
  - IRM 25.1.4.3.11, *Fraud Suspense*
  - IRM 25.1.5.2, *Grand Jury Suspense*
  - IRM 25.1.3.4(7), *Accepted Criminal Referrals*

4.8.11.3.3  
(03-29-2017)

**Initial Receipt of Fraud  
and Grand Jury Cases  
for Suspense in  
Technical Services**

- (1) When the case for suspense is initially received in TS, it will be placed into ERCS Status Code 20, *Mandatory Review*, with the applicable review type based on which box is checked on Form 3198, *Special Handling Notice For Examination Case Processing*, Suspense Type 504 (30 day action date) and assigned to the fraud coordinator. Refer also to IRM 4.8.11.3.6.3.
- (2) Administrative fraud (referred to by CI as "prosecution recommendation") and grand jury (referred to by CI as "further investigation") suspense cases may be at significantly different stages of the civil examination process when the criminal investigation is referred to DOJ. Administrative fraud suspense cases should normally be complete in virtually all aspects when arriving for fraud suspense (i.e., ready for unagreed examination report to be issued), whereas grand jury suspense cases will vary considerably, depending upon the status of the civil case as of the date the grand jury investigation was initiated (e.g., from unstarted with only ERCS/AIMS controls established to virtually complete).
- (3) When an administrative investigation ("prosecution recommendation") is completed and CI recommends criminal prosecution to the AUSA or DOJ, CI will send the *Notice of Department of Justice Referral* memorandum to TS to initiate suspense action of the taxpayer's civil examination. The fraud coordinator will research AIMS/ERCS, contact the special agent, and /or use a Planning and Special Programs (PSP) specialist to determine the identity of the assigned cooperating examiner. This information will be available on a Form 6544, *Request for Cooperating Examiner / Revenue Officer*. When the case is open in an examination group, the fraud coordinator will forward via secure e-mail the CI memorandum and provide instructions to the examination group to send the case for Fraud Suspense. The instructions to the field should specify a response date for receipt of the case in TS, generally within 30 days.

The group should forward the case to TS in Status Code 21 and check the *Suspense Cases* and *Fraud Suspense* boxes in the *Forward to Technical Services* section of Form 3198.

- (4) Once a grand jury (“further investigation”) request has been approved, CI will send the *Notice of Department of Justice Referral* memorandum to TS to initiate suspense action for the taxpayer’s civil case file as required by IRM 9.5.2.6.3. Upon receipt of the notification by Examination, taxpayer contact **must immediately cease** on the tax year(s) currently under examination. Absent initiation of Policy Statement 4-26 procedures (see IRM 1.2.13.1.11, *Policy Statement 4-26 (Formerly P-4-84)*), the examination must be documented and completed to the point that the case was approved for the grand jury. See IRM 25.1.5.2(3). No additional AIMS/ERCS controls will be established on any prior, subsequent, or related returns to those already under examination once the grand jury investigation has commenced. The open civil case file is sent to TS for Grand Jury Suspense. In order to avoid the possibility of tainting the civil files with Federal Rule of Criminal Procedures 6(e) (Rule 6(e)) information. Refer to IRM 9.3.1.4.1, *Grand Jury Secrecy (Federal Rules of Criminal Procedure Rule 6)*. **There could be serious legal and administrative consequences for not adhering to these procedures.** If the civil case file becomes “tainted”, it could render all information and documents unusable for civil purposes. All grand jury information must be treated with special handling according to Rule 6(e).  
Once CI’s *Notice of Department of Justice Referral* memorandum is received, the fraud coordinator will determine whether or not the taxpayer’s returns are under examination by checking AIMS/ERCS and IDRS. If it is determined that the taxpayer is under examination, send the CI memorandum to the Examination group via secure e-mail and include instructions notifying the group of the procedures for sending the case to TS for Grand Jury Suspense. The Examination group must cease taxpayer contact immediately upon this notification, promptly document all examination work done to date, and prepare an examination report on adjustments developed prior to notification of proceedings. IRM 25.1.4 and IRM 25.1.5, *Grand Jury Investigations*, and IRM 4.8.11.3.4.

**Note:** If the grand jury investigation started before all adjustments were developed, completing a report may not be possible.

The examination group should then forward the case to TS in Status Code 21 and check the *Suspense Cases* and *Grand Jury Suspense* boxes in the *Forward to Technical Services* section of Form 3198.

- (5) For both types of cases (administrative fraud and grand jury) the fraud coordinator will retain a copy of the *Notice of Department of Justice Referral* memorandum and instructions provided to Examination to send the case to suspense for monitoring purposes. These should be monitored until the case is received in TS for Fraud or Grand Jury Suspense. If the case is not received in TS by the response date set in the initial memo (generally within 30 days), a follow-up with the examination group is required. It is particularly important to follow up on grand jury cases, due to the risk that these cases can become “tainted” with grand jury information, specifically in instances where the examiner is requested to be a cooperating examiner during the grand jury investigation. If the case is not received in TS after 90 days, the request should be elevated through the TS management chain for resolution with Examination.



- (6) When the case is received for suspense, associate the *Notice of Department of Justice Referral* memorandum and the instructions you provided to Examination with the civil case file(s) (if not already included by the examiner). The fraud coordinator will review the case to determine if all qualifications have been met before placing it into Fraud or Grand Jury Suspense.

4.8.11.3.4  
(03-29-2017)

**Review of Cases  
Submitted to Fraud or  
Grand Jury Suspense**

- (1) Incoming Fraud or Grand Jury Suspense cases should be reviewed immediately after arriving in TS. If it is not possible to conduct a comprehensive review immediately, at a minimum, a detailed statute review should be performed to verify the statute of limitations and a quick review performed to determine if the case qualifies for suspense and the case file appears complete. If the statutes are not correct or the statutes are not adequately protected, and / or the case file does not qualify for suspense (not referred to DOJ or incomplete), it should generally be returned promptly (i.e., within the established time frames associated with the suspense type for incoming cases - generally within 30 days) to Examination with Form 3990, *Reviewers Report*.
- (2) Incoming Fraud Suspense case should be reviewed when received in TS in which prosecution has been recommended. Use the quality attributes in IRM Exhibit 4.8.3-1, *Quality Attributes*, and the procedures outlined in Exhibit 4.8.11-1 to aid in the review. The case files should contain sufficient development to support the proposed adjustments and penalties reflected in the workpapers and the RAR. The case files should contain sufficient explanations, supporting schedules, and copies of supporting documentation to support any proposed adjustments identified prior to the case being placed into suspense. As a general rule, a case sent to TS for Fraud Suspense should be a complete unagreed case in all respects (similar to a completed unagreed examination case file ready for issuance of a statutory notice of deficiency).
- (3) The review of incoming Grand Jury Suspense cases is different from the review of incoming Fraud Suspense cases in that the examination on an incoming grand jury case ceased "as is, where is" upon notification of grand jury proceedings. Therefore, the case may or may not have progressed far enough for the examiner to propose specific adjustments, or civil actions ceased before the issues were examined or fully developed. This may present problems because the case file may lack clear and concise documentation. Regardless of these problems, the case file documentation for work done to date must be reviewed, and the case must be placed in suspense and the statutes monitored. No additional audit activity may be performed once notification of the grand jury investigation is received. Activity to prepare the case for suspense is allowed. The examiner is responsible for properly documenting the case file to the point at which examination activity ceased. Actual review of the case for Grand Jury Suspense is done in the same manner as in Fraud Suspense cases, except that the fraud coordinator must recognize that the examiner was not responsible for any additional work (other than preparing the case for suspense) after notification of the grand jury referral. The focus of the review of a case for Grand Jury Suspense is on proper documentation of work done prior to notice of grand jury referral.
  - a. The fraud coordinator will ensure that the examiner is following the procedures as outlined in IRM 25.1.5. Refer specifically to IRM 25.1.5.2, and IRM 25.1.5.3, *Cooperating Grand Jury Examiner/Revenue Officer Procedures*. The pre-grand jury stage should be clearly documented as described in IRM 25.1.5.3(5)(a).

- b. Any evidence constituting “matters before the grand jury” obtained while the case is under grand jury investigation is unavailable for use in civil settlement. It is, therefore, essential for the fraud coordinator to ensure that the evidence in the case file is documented with a date prior to initiation of the grand jury investigation. The date **MUST** be documented in the case file. Recommended locations for the documentation of the receipt date are on the activity record, Form 9984 and the Form 4665, *Report Transmittal Letter*. This will allow for consistency and easy identification to ensure no “tainting” of the case file has occurred.
- c. The examiner should prepare a report containing the adjustments developed prior to the approval of the grand jury investigation to establish a starting point for civil settlement of the case. See IRM 25.1.5.2(3). If the grand jury investigation started before adjustments were developed, completing a report may not be possible.
- d. If during the review of the case it is identified that the case file(s) contains documents and / or analysis dated after the initiation of the grand jury investigation **AND** after the examiner started working as a cooperating agent on the grand jury investigation (if applicable), then there may be potential grand jury Rule 6(e) “taint”. If this issue is identified the following actions should be taken:
  - Contact the special agent and examiner to confirm the date the grand jury investigation started and if the examiner has been “exposed” to any grand jury Rule 6(e) information by the date the civil case was placed into Status Code 21.
  - If confirmed that the examiner was not exposed to any Rule 6(e) information, then the case file may be considered free from “taint”. Document the steps taken to confirm that the case does not include any Rule 6(e) information and continue reviewing the case for acceptance into suspense.
  - If it is confirmed that the examiner was exposed to Rule 6(e) information prior to sending the case for suspense (or if it cannot be confirmed that the examiner was not exposed to Rule 6(e) information) then the fraud coordinator should request assistance from CT Counsel to determine the potential Rule 6(e) exposure.
  - If Rule 6(e) information is confirmed in the case file(s), then the “tainted” information in the case file(s) should be removed. Remove the Rule 6(e) information identified by CT Counsel and place into a separate folder(s) / envelope(s). This information should be transferred to CI to be part of their files.

**Note:** The TS fraud coordinator that reviewed the case may now also be “tainted”. This fraud coordinator should not be involved in the suspense or final civil resolution of the case. The civil case should generally be transferred to another TS POD (within same territory if possible) for suspense.

-- After removal of any “tainted” information, the civil examination files will continue to be reviewed for acceptance into suspense.

- (4) At a minimum, the fraud coordinator will ensure the incoming case for suspense (both types) includes the following. Refer also to IRM 25.1.4.3.11 and IRM 25.1.5.2.
  - a. TD F 15-05.11, *SBU Cover Sheet*, attached to the front of the file folder. Refer to IRM 10.2.13.4.1, *Marking Requirements and General Handling Procedure*, and IRM 10.2.15.3, *Protected Items/Data*

- b. *Notice of Department of Justice Referral* memorandum, clearly identifying the taxpayers / returns / periods referred and the type of referral. See IRM 4.8.11.3.2.
- c. Complete copies of all tax returns controlled in Examination TC 420) and CI (e.g., TC 914, TC 916, TC 918). The original returns should be provided to CI.
- d. One or all of the following, as applicable:
  - Form 2797, *Referral Report of Potential Criminal Fraud Cases*, signed and accepted by CI
  - Form 6544, *Request for Cooperating Examiner*, reflecting assignment of RA as cooperating examiner on a CI-initiated investigation
  - Form 14584 (or equivalent if initiated prior to 11/24/2014)
- e. Examination cases which are involved in tax or tax-related investigations which are under the jurisdiction of DOJ / AUSA qualify for suspense in TS. The specific taxpayers / returns which meet this criteria must be included on the *Notice of Department of Justice Referral* memorandum. The civil examination package sent for suspense may include additional related returns / taxpayers which are not listed on the DOJ referral memo because they are not being investigated / prosecuted for tax or tax-related charges and / or are not under the jurisdiction of the DOJ / AUSA. For these related returns, Examination and CI must discuss the balancing of the civil and criminal aspects per Policy Statement 4-26, specifically paragraph 4.

**Note:** A current transcript reflecting TC 914 posted / pending for each tax period / return in the case file. If TC 914 controls are not present, contact the special agent assigned to the case to have TC 914 controls posted or to determine why no TC 914 was posted.

- f. Workpapers supporting the civil adjustments to the extent developed for grand jury cases. Workpapers supporting all adjustments should be sufficient enough to support preparation of a SNOD for administrative fraud cases. Ensure the file is clearly documented with the source documents necessary to establish any unreported income. Merely referencing the criminal file or SAR is not sufficient. The civil file must be able to stand on its own. If a decision is made to issue a notice of deficiency or a computation is needed to support a six-year statute under IRC 6501(e), the documents must be secured and in the case file. In particular, it is essential that a complete copy of the return, including statements, or if not available, return transcripts (CFOL, MeF, TRDBV, CIS, LIN Link, etc) be enclosed for any flow-through returns involved in the IRC 6501(e) computation. Without the flow-through returns the six-year statute may not be supportable. Necessary action to obtain any missing documents should be initiated during the incoming review of the case. The fraud coordinator should not wait until the statute is imminent due to delays that may be encountered and / or the possible unavailability of required information needed to meet the government's burden of proof under IRC 6501(e).
- g. Copies of source documents supporting all proposed adjustments must be included in the civil case file.
- h. Workpapers identifying the indicators of fraud and supporting all other proposed penalties. Clear documentation of intent to defraud should be included. The discussion of criminal intent from the SAR should also be included, if available. The badges of fraud should be detailed and included in the case file. In administrative (non-grand jury) cases, a copy of the SAR should be included in the civil case file when sent for suspense. If



the SAR is not included, a copy may be requested from the assigned special agent. In grand jury cases, the examiner may or may not have been pursuing fraud as of the date notification of grand jury commencement was received. The file should be well documented regarding all determinations made up to the point it was forwarded for suspense.

**Caution:** If any of the returns coming in for suspense were not timely filed (delinquent), the fraud coordinator must ensure that all applicable delinquency penalties are addressed by Examination, **and** assessed by Examination where appropriate. The tax and applicable delinquency penalties under IRC 6651(a) and IRC 6651(f) for the amount of tax shown (reported) on the return must be assessed within the IRC 6501(a) statute of limitations (normal three-year ASER). The IRC 6651 penalties on the amount of tax shown on the return are immediately assessable and are not subject to deficiency procedures with one important exception. Any determinations by Examination (and / or CI) to not assess the tax and penalties before the assessment ASER expires must be approved in writing by the Examination TM (and CI SAC when applicable). Such a determination is subject to the Form 10498-B, *Joint Investigations Intent to Solicit Consent to Extent Statute*, process discussed in IRM 25.1.4.3.8, *Statute Protection*. The approvals should clearly indicate that the penalties under IRC 6651(a) and / or IRC 6651(f) are not being assessed and why.

If the delinquency penalties are not addressed on a delinquent return sent for suspense, return the case to Examination. Refer Examination to IRM 20.1.2.2, *Failure to File a Tax Return or to Pay Tax—IRC 6651* and IRM 25.1.7.7.1, *Assessment Procedure for the Fraudulent Failure to File (FFTF) Penalty*, for procedures on making the assessments. All IRC 6651(f) FFTF penalty proposals must be approved by Area Counsel.

In the case of delinquent Form 1065, *U.S. Return of Partnership Income*, or Form 1120-S, *U.S. Income Tax Return for a S Corporation*, which is sent for suspense, the applicability of the failure to file penalties under IRC 6698 and IRC 6699 should also be addressed and assessed by Examination where appropriate. The statute of limitations will be three years from the date the return is filed or for SFR inputs when an agreement is reached at the entity level. If the case is unagreed and no return was filed, then there is no ASER, per IRC 6501(c)(3). Refer also to IRM 20.1.2.3 *Failure to File a Partnership Return—IRC 6698*, IRM 20.1.2.4 *Failure to File Partnership Return Using Electronic Media*, and IRM 20.1.2.5 *Failure to File S Corporation Return—IRC 6699*.

- i. A pre-prosecution report as described in IRM 25.1.4.3.10, *Preparation of the Pre-Prosecution Report*. This may not be applicable for all grand jury investigation cases.
- j. All statute determinations and protection actions taken are clearly documented in the case file. Examples include, but are not necessarily limited to the following:
  - All Form 895 s, *Notice of Statute Expiration*
  - Form 10498-A, *Intent to Commence Civil Action - Expansion of Examination*

-- Form 10498-B, *Joint Investigations Intent to Solicit Consent to Extend Statute*

-- Form 872s, *Consent to Extend the Time to Assess Tax*

Related documentation and correspondence will be completed accurately and included in the case file as required.

- k. Each return must have a detailed computation of the omission of gross income, regardless of Examination's reliance on the IRC 6501(e) six year ASER. See IRM 25.1.4.3.10(6), IRM 25.1.4.3.8.1, *IRC 6501(e), 6-Year Statute*, and IRM 25.6.23.6.6.2(4), *Reliance on IRC Provisions Which Extend Normal Assessment Statute*. This applies to both administrative and grand jury cases.

- (5) The statute of limitations for all returns sent for suspense should be reviewed and confirmed. Refer to IRM 4.8.11.3.5 and subsections thereunder.
- (6) When determined the case will be accepted for suspense, complete the steps as provided in IRM 4.8.11.3.6, and subsections thereunder.
- (7) If the case does not meet all requirements to accept the case into suspense prepare Form 3990 explaining the requirements and corrections needed. Transfer the case back to the originating Examination group using ERCS and Form 3210 *Document Transmittal*. Send it back in the prior status used by Examination (12, 17, 18), and the appropriate ERCS reject reason code per IRM Exhibit 4.7.7-5, *TS Reject Reasons*.

**Caution:** It is critical the incoming case be promptly reviewed to determine if the case qualifies for fraud / grand jury suspense. When returning a case for Grand Jury Suspense back to the examiner, additional discussion with the examiner and manager may be warranted to confirm their involvement with the grand jury investigation.

4.8.11.3.5  
(03-29-2017)  
**Confirming the Statute  
of Limitations**

- (1) When reviewing a case submitted for Fraud or Grand Jury Suspense, the first thing the fraud coordinator will determine is the correct statute of limitations. The fraud coordinator must make an **independent determination** to confirm the statute of limitation date. Review the return, IDRS Masterfile, AIMS, ERCS, Form 895, *Notice of Statute Expiration*, and any other statute-related documentation available to confirm the received / filed date, due date, and determine the statute date. If different or incorrect, the dates will be reconciled, and updated accordingly. A *Fraud and Grand Jury Suspense Control Sheet* (refer to IRM 4.8.11.3.6.2 and Exhibit 4.8.11-2) is completed for each taxpayer summarizing the statute of limitations for each return placed in suspense. Related taxpayers / returns which may affect the statute of limitations should also be identified on the control sheet. Refer to IRM 4.8.11.3.5.1, for more detailed procedures.
- (2) Refer to IRM 25.6, for more information on IRS policies and procedures relating to statutes.

4.8.11.3.5.1  
(03-29-2017)  
**Statute Protection**

- (1) TS is responsible for protecting all civil assessment statutes for controlled returns accepted into Fraud and Grand Jury Suspense. Therefore, it is mandatory to review the case for statutes **immediately** after it is received in TS, and before the case is accepted into suspense. Subsequently, TS will continue to monitor the statutes of limitations on all returns controlled in Fraud and Grand Jury Suspense (refer to IRM 4.8.11.4). TS will also monitor the

statutes of limitations of all subsequent and related return filings in failure-to-file cases. Refer to Exhibit 4.8.11-5 for detailed instructions to follow in failure-to-file cases.

**Note:** “Monitoring the subsequent and related return filings” does not require the TS fraud coordinator to establish AIMS / ERCS controls and / or actively protect the subsequent / related assessment statutes. However, the fraud coordinator should coordinate with Examination and CI for any potential civil actions on these returns, as warranted. In most instances, subsequent years will be addressed during the civil resolution. See also IRM 4.8.11.4.2.5.

- (2) TS generally will not accept cases into suspense if the assessment statute for any controlled tax period / return in the case file does not have **at least 365 days (one year)** remaining on the live assessment statute (**three-year or approved six-year**), and / or if the case file does not contain documentation of the Examination group’s prior efforts to protect the statute of limitations as required in IRM 25.1.4.3.8. The one year requirement applies to both types of suspense cases, administrative fraud (non-grand jury) and grand jury. A timely approved Form 10498-B (or equivalent) allowing the assessment statute(s) to expire must be in the file if the case is sent for suspense with less than 365 days remaining on the assessment statute.

**Note:** In certain grand jury cases with less than one year remaining on the statute and greater than 210 days (per IRM 25.6.22.2.1, *Assessment*), an exception can be made to accept the case into Grand Jury Suspense in TS if agreed upon in writing by the local TS TM and the Examination TM. This exception will only apply when CI has allowed for a Form 872, *Consent to Extend the Time to Assess Tax*, to be solicited from the taxpayer via a completed Form 10498-B and the taxpayer resists signing the Form 872, or when the mere attempt to secure an extension to meet the one-year rule is deemed by CI detrimental to their investigation via a completed Form 10498-B. Upon written agreement between TS and Examination, the grand jury case will be accepted into suspense in TS.

4.8.11.3.5.2  
(03-29-2017)  
**IRC 6501(e) Six Year  
Statutes**

- (1) If a taxpayer omits from gross income an amount in excess of 25% of the amount of gross income reported on the return (including an overstatement of basis), or omits more than \$5,000 of income attributable to foreign financial assets (FFA), IRC 6501(e)(1) provides a six-year statute of limitations on assessment. The burden of proof is on the government. The statute can be updated to the six-year ASED under IRC 6501(e)(1) when:
  - The return contains an omission of more than 25% of gross income (including an overstatement of basis), or more than \$5,000 of FFA,
  - The three-year statute is within 180 days of expiring, and
  - Form 10498-B (or equivalent) has been properly executed to allow the three-year statute to expire and rely on the six-year statute under IRC 6501(e)(1).
- (2) The IRC 6501(e) 25% omission of income computation by Field Examination must be independently verified by the TS fraud coordinator and approved by the TS group manager before it is relied upon within TS. A copy of the 25% omission computation and prior statute approvals by the Examination TM will

be attached to the return and Form 895. Refer to IRM Exhibit 25.6.23-3, *Instructions for Updating the Statute on AIMS*, section on “NN” statutes for more details.

- (3) AIMS/ERCS and Masterfile will be updated to reflect the actual live numeric six-year statute date (alpha code “NN” will not be used by TS). The live numeric six-year statute date is computed at six years after the return was filed or due, whichever is later. The six-year ASED is **not** computed by adding three years to a previously extended three-year statute date. A six-year ASED may be extended by consent.
- (4) The six-year statute must also be protected accordingly. Only after the six-year statute (when applicable) has expired or allowed to expire via Form 10498-B (or equivalent) will the fraud statute under IRC 6501(c) (alpha code “CC” or “OO”) be relied upon.
- (5) For more information on six-year ASED policies and procedures refer also to IRM 4.8.11.4.2.4.1.1, IRM 4.8.11.3.5.3, IRM 25.1.4.3.8.1, *IRC 6501(e), 6-Year Statute*, and IRM 25.6.1.9.5.3, *25% Omission*.

4.8.11.3.5.3  
(03-29-2017)  
**AIMS/ERCS Alpha  
Statute Codes**

- (1) See IRM 25.6.23.6.6.1, *Extension Not Solicited* and IRM 25.6.23.6.6.2, *Reliance on IRC Provisions Which Extend Normal Assessment Statutes*, in conjunction with IRM Exhibit 25.6.23-3, *Instructions for Updating the Statute on AIMS*, for a more detailed discussion of the appropriate use of the following alpha statute codes. The discussion below is limited to alpha statutes specific to joint investigation cases and those most commonly used in joint investigation cases. More than one alpha code may apply to a return, and all must be carefully considered in determining which alpha code to use. It is imperative that all statute determinations are clearly documented along with the appropriate approvals.

**Note:** The most conservative approach is to be used when selecting from among alternative statute dates. If the three-year IRC 6501(a) statute is still open, it is to be used. Once that is allowed to expire, the six-year IRC 6501(e) statute (or any shorter live statute date if another applies) is to be used before alpha code “CC” or “OO” is utilized. Care must be taken to distinguish a live statute governing the entire return (e.g., IRC 6501(e) ) from a live statute covering only a specific issue (e.g., IRC 6501(c)(8)(B) when failure to report is due to reasonable cause and not willful neglect). If you are unable to determine the appropriate statute of limitations, a referral to Area Counsel for a formal written opinion may be warranted.

- (2) **“NN” - IRC 6501(e) - Substantial Omission of Items**
  - a. While Field Examination may use alpha code “NN” for cases where they have determined and approved a six-year statute under IRC 6501(e), TS does not utilize alpha statute “NN” on cases in our status. When a six-year statute under IRC 6501(e) is approved by Examination and confirmed by TS, ERCS will be controlled under the live numeric six-year statute (NEVER under the alpha code “NN”). **This requirement applies to cases in TS only.**
  - b. The IRC 6501(e) 25% omission of income computation by Field Examination must be independently verified by the TS fraud coordinator and approved by the TS group manager before it is relied upon within TS. A copy of the 25% omission computation and prior statute approvals by the

Examination TM will be attached to the return and Form 895. Refer to IRM Exhibit 25.6.23-3, *Instructions for Updating the Statute on AIMS*, section on “NN” statutes for more details.

(3) “CC” - Joint Investigation

- a. Alpha Statute Code “CC” should only be used after it has been confirmed that no other live statute is applicable (generally the three-year or six-year, including extensions by consent and / or suspensions).
- b. “CC” is used for tax periods / returns covered by a Form 10498-B or equivalent statute balancing memorandum signed by both Examination TM and CI SAC, stating that no consent to extend the statute should be secured, or for tax periods for which permission to solicit consent to extend the statute was obtained but the taxpayer did not sign the consent. Form 10498-B or equivalent memorandum executed by Examination is signed (in the following order) by the Examination GM, SSA, SAC (or delegate), and Examination TM or AD. If the case is already in TS suspense when the Form 10498-B is initiated, it is executed by the TS GM, SSA, SAC (or delegate), and TS TM.
- c. If Form 10498-B was executed in the field before the case was sent to TS for suspense, the validity of the field’s Form 10498-B must be verified before the field’s “CC” alpha statute is accepted or the tax year is updated to “CC” by the fraud coordinator.
- d. Statutes expiring in a TS status should not be updated to “CC” unless a signed Form 10498-B has been signed by the TS / Examination GM, SSA, SAC, and TS / Examination TM.
- e. “CC” may also be used with a tax return, in a joint investigation case, where the statutory period for assessment expired **before** the return was assigned to the examiner or specialist.
- f. The month (MM) and year (YYYY) entries accompanying the “CC” alpha code are the month and year of the expired three-year statute (including extensions by consent and / or suspensions).
- g. See IRM Exhibit 25.6.23-3 under “CC-Joint Investigation”. An appropriate statement in the remarks section of Form 895 would be: “Form 10498-B approved on [date signed by the TM or the area director].”

**Note:** If CI withdraws from, discontinues, or otherwise closes the joint investigation prior to the expiration of the statute, alpha code “CC” no longer applies and the statute controls must be updated to reflect the applicable live numeric statute expiration date or other applicable ASED alpha code. For example, update back from the no longer applicable “CC” to the live three-year or six-year statute or to “OO” if expired / allowed to expire and fraud applies (or fraud is still being pursued). Other appropriate alpha codes may also be used if other exception(s) to the normal three-year or six-year assessment statute applies.

**This requirement applies to tax years / returns for which Form 10498-B was previously executed allowing the civil statute to expire, but for which the normal statute is still open (live) when the criminal investigation concludes. Necessary action to protect the civil statute must be re-determined for such tax years / returns based upon the outcome of the criminal investigation, which would now be known. Alpha code “CC” is not valid once jurisdiction of the case is released to Examination by CI.**



**If the assessment statute is still open when the criminal investigation concludes, TS TM approval is required for TS to update the live ASED to alpha “OO” or other applicable statute exception.**

- (4) **“OO” - IRC 6501(c)(1) - False or Fraudulent Return (Not Under Joint Investigation)**
  - a. Cases in Fraud and Grand Jury Suspense should never have an alpha code of “OO”, as all cases in suspense are cases which are under active joint investigation. The return under joint investigation, “CC”, should be used rather than “OO” (see paragraph (3) above).
  - b. “OO” is used when the Service relies on the provisions of IRC 6501(c)(1), relating to the filing of a false or fraudulent return, to keep the statute open. If fraud is proven, there is no limit on the period for assessment.
  - c. When cases are no longer under criminal investigation and are sent back to the group for civil resolution, the statutes should be updated to the earliest live (three-year or six-year) ASED, if still open. If the applicable ASEDs are expired, then the ASED should generally be updated from “CC” to “OO” when the case is returned for civil resolution at the conclusion of the criminal investigation.
  - d. Use “OO” for prosecution and non-prosecution years and DI years if the statute has expired and the case file(s) are being returned for civil resolution. The month (MM) and year (YYYY) entries accompanying the “OO” alpha code are the month and year the statute would expire (or already expired) if the return was not false or fraudulent.
- (5) **“GG” - Non-TEFRA Flow-through Entity**
  - a. Cases in suspense may include one or more flow-through entities (e.g. Form 1065, Form 1120-S). Refer to the “GG” section of IRM Exhibit 25.6.23-3, for the requirements on when “GG” may be used for the statute on AIMS.

**Caution:** Alpha statute code “GG” does not apply to flow-through returns which may be subject to tax or penalty (other than IRC 6698 and IRC 6699) assessments at the entity level, or to TEFRA partnerships. In addition, when the assessment statutes for all taxable partners or shareholders are expired “GG” does not apply, as no tax deficiencies can be assessed against the partners or shareholders as a result of flow-through adjustments.
  - b. For all non-taxable non-TEFRA flow-through returns (which are NOT subject to tax or penalty assessments at the entity level), a “GG” statute should be used while the case is in suspense following the provisions in IRM Exhibit 25.6.23-3.
  - c. For all non-taxable non-TEFRA flow-through returns (which are NOT subject to tax or penalty assessments at the entity level), a Form 10498-B is not required to be prepared and executed prior to updating the statute to “GG”. A Form 10498-B is only required when the flow-through return is subject to tax or penalty assessments at the entity level or is subject to TEFRA.
  - d. The month (MM) and year (YYYY) of the alpha coded ASED is three years after the non-taxable non-TEFRA return is filed or due, whichever is later. IRM 4.8.11.3.4

(6) “EE” - No Return Filed

- a. “EE” designates no return has been filed by the taxpayer. Cases in suspense may include non-filed returns. Refer to the “EE” section of IRM Exhibit 25.6.23-3 for the requirements on when “EE” may be used for the statute on AIMS.
- b. Alpha statutes “CC”, “OO”, “NN”, and “GG” do not apply on years / returns where no return has been filed.
- c. The month (MM) and year (YYYY) appear with “EE” represent the normal statute expiration date if the return had been timely filed.

4.8.11.3.6  
(03-29-2017)  
**Review Completed and  
Case is Being Accepted  
Into Suspense**

- (1) For each taxpayer, place copies of the most critical information which is needed for monitoring the case while it is in suspense into a separate specially colored folder (see IRM 4.8.11.3.6.1). This “suspense monitoring file” will allow easy access to all pertinent information.
- (2) Complete the suspense control sheet (see IRM 4.8.11.3.6.2) and attach it to the front of the suspense monitoring file.
- (3) Complete Form 5348, *AIMS/ERCS Update (Examination Update)*, to update AIMS and ERCS accordingly for statutes, status codes, review types, suspense types, etc. Refer to IRM 4.8.11.3.6.3 and IRM 4.7.7 *Examination Returns Control System (ERCS), Technical Services*.
- (4) Place the suspense monitoring file and the examination case file(s) in your designated secure area following your local procedures.
- (5) While the case is in suspense, follow the monitoring policies and procedures in IRM 4.8.11.4.

4.8.11.3.6.1  
(03-29-2017)  
**Specially Colored Folder  
- Suspense Monitoring  
File**

- (1) Many case files placed into suspense are voluminous, so all pertinent information for monitoring the case can be placed in a specially colored folder so that it can be located quickly. It is recommended, the suspense monitoring file folder should contain copies of the following:
  - a. Complete copies of all returns controlled (the original returns are generally required to be maintained by CI). This will generally include IRC 6020(b) SFR packages as applicable.
  - b. All applicable statute protection documents and supporting information, including but not necessarily limited to:
    - Form 895
    - Form 10498-A,
    - Form 10498-B
    - Statute consents (e.g., Form 872, etc.)
    - Computations of omission of gross income
    - Memorandums and / or other documents discussing analysis and determinations regarding the statute of limitations (e.g., statute balancing memorandums, opinions from Area Counsel, e-mails with CI, etc.)
  - c. *Notice of Department of Justice Referral* memorandum(or equivalent for cases accepted prior to May 2015).
  - d. Form 14584, (or equivalent), when available.
  - e. Form 2797, *Referral Report of Potential Criminal Fraud Cases*, signed and accepted by CI.
  - f. Form 11661, *Fraud Development Recommendation - Examination*, as applicable.

- g. Pre-Prosecution Report / revenue agent report (RAR) (may not always apply in a grand jury investigation).
- h. Form 9984, *Examining Officer's Activity Record* (or equivalent) for the reviewing actions completed by TS, and for all subsequent TS actions which will be taken. See IRM 4.8.1.6.1 (2) and (3), *Case Review (641)*, to record the time as well as the actions taken on the activity record. A copy of the examination activity record may also be kept here as warranted. See IRM 4.8.1.6.1(2) and (3) to record the time as well as the actions taken on the activity record.
- i. It is also acceptable to include any other relevant information as determined appropriate by the fraud coordinator and / or manager.

4.8.11.3.6.2  
(03-29-2017)

#### Fraud and Grand Jury Suspense Control Sheets

- (1) A suspense control sheet will be completed for each taxpayer. See Exhibit 4.8.11-2. This must be attached to the front of the suspense monitoring file folder.
- (2) The control sheet is self-explanatory and summarizes the statute of limitations for each return, as well as summarizing other relevant case information, including but not necessarily limited to the following:
  - the type of investigation / suspense
  - project and tracking codes
  - other important AIMS/ERCS codes
  - contact information for the examiner, special agent, and power of attorney
  - quick identification of known related cases
  - various important dates, and
  - special comments and / or instructions

**Note:** It is also acceptable to include any other relevant information as determined appropriate by the fraud coordinator and / or manager.

4.8.11.3.6.3  
(03-29-2017)

#### AIMS/ERCS Updates

- (1) It is important that the AIMS and ERCS databases be accurate with respect to the statute date, project code, status code, review type, suspense type, and next action date. Refer also to IRM 4.7.7, for more information regarding ERCS codes used in TS.
- (2) The ERCS codes TS utilizes specifically for Fraud and Grand Jury Suspense cases are as follows. Any exceptions must be clearly documented and approved by the TS group manager.

Type of Case	Status Code	Review Type	Suspense Type
Initial Receipt - Not Yet Reviewed	20	45 or 46	504 (30 days)
Fraud Suspense (administrative / non-grand jury)	32	45	591 (180 days)
Grand Jury Suspense	36	46	592 (180 days)



Type of Case	Status Code	Review Type	Suspense Type
Fugitive	32 or 36	43	591 or 592 (180 days)

**Note:** Fugitive cases are those where the taxpayer has fled from prosecution and is treated as a fugitive by CI. These cases may be either grand jury or non-grand jury, and the status code and suspense type should be input accordingly based on the type of criminal investigation.

- (3) When the case is initially received in TS it will be placed into ERCS Status Code 20 *Mandatory Review*, with the applicable review type (based on which box is checked on Form 3198), and Suspense Type 504 (30 day action date) and assigned to the fraud coordinator.
- (4) After the case has been reviewed (see IRM 4.8.11.3.4) and determined that the case will be accepted into suspense, a Form 5348 will be completed to update ERCS with the appropriate status code, review type, and suspense type as shown in paragraph (2) above.
- (5) The case remains in Status Code 32 / 36 until the underlying prosecution has been completed or jurisdiction is otherwise released by DOJ, and Form 13308 is received from CI.
- (6) Copies of all Form 5348 should be maintained in the suspense monitoring file.

4.8.11.3.6.4  
(03-29-2017)  
**Monitoring Uncontrolled  
Subsequent Year  
Returns**

- (1) The returns for years / periods subsequent to the returns controlled in fraud or grand jury suspense will be handled as follows:
  - a. At least annually (or during the six-month status checks per IRM 4.8.11.4), secure IMFOLI / BMFOLI transcripts to determine if new returns have been filed.
  - b. If a subsequent year return has been filed, secure a copy of the return (correspondence imaging system (CIS) or modernized electronic filing (MeF)) or transcript (TRDBV, RTVUE, BRTVUE) and place it in a "subsequent year" folder / section as part of the suspense monitoring file. Ensure that the filed returns have been processed and that the statutes are correct. If any civil actions are deemed warranted by the fraud coordinator, coordinate possible actions with CI and the cooperating revenue agent (if applicable). These subsequent returns will need to be addressed by Examination during the civil resolution when the case is removed from suspense.

4.8.11.4  
(03-29-2017)  
**Monitoring Cases in  
Fraud and Grand Jury  
Suspense**

- (1) This subsection focuses on the policies and procedures to follow when cases are already accepted into TS for Fraud and Grand Jury Suspense.

4.8.11.4.1  
(03-29-2017)  
**Six Month (180 day)  
Status Checks - All  
Suspense Cases**

- (1) At least every six months (180 days), each tax return / period controlled in Fraud and Grand Jury Suspense must be reviewed for changes to the statutes of limitations and the status of the criminal investigation / prosecution. Suspense Types 591 and 592 are used in ERCS to set these 180 day action dates. ERCS suspense reports should be used to determine which cases are due for a six-month check. See Exhibit 4.8.11-4 for a job aid in completing the six-month check procedures.
- (2) At a minimum, there should be some form of contact with CI (written / e-mail recommended) on every case in suspense to ensure that there is still an active criminal investigation / prosecution and when they anticipate the criminal case to be closed. If no information is contained on the activity record regarding the case status within the last six months, CI should be contacted.
- (3) Other actions that must be taken at each six-month action date include, but are not necessarily limited to:
  - Reviewing Masterfile / IDRS for any relevant changes, such as statutes, freeze codes, returns, and IRS controls (e.g., -Z freeze, -A freeze, TC 91X (e.g., TC 912, TC 914, etc.), TC 42X, TC 976 / 977, TC 560, TC 59X, etc.). Suggested command codes to research include IMFOL / BMFOL / TXMODA, AMDIS, INOLE, TRDBV, ENMOD, SUMRY.
  - Updating AIMS / ERCS coding, as applicable.
  - Updating Form 895 and suspense control sheet(s), as applicable.
  - Checking for any returns filed by the taxpayer(s) since the last periodic check.

**Note:** When amended and / or delinquent returns are filed / secured during a criminal investigation, the cooperating revenue agent / revenue officer and / or special agent are required to update Masterfile / IDRS that a return has been received and update the statutes accordingly. See IRM 25.1.3.4(6), *Accepted Criminal Referrals*. They also must determine if the return will be processed / assessed. Therefore, during the six-month checks, it is important to confirm with CI if **any** returns have been filed / secured which may not yet be reflected on Masterfile / IDRS.

4.8.11.4.1.1  
(03-29-2017)  
**Six-Month Checks  
Specific to Non-Filer  
Cases**

- (1) Each non-filed tax year should be checked for indications of delinquent returns being filed. All returns / periods in suspense with a statute alpha code of "EE", *No Return Filed*, will be closely reviewed to determine if returns have been filed. Due to the often lengthy prosecution time frame in criminal cases and the existence of the "-Z" freeze and TC 91X, care must be taken to ensure that **all** evidence of filing is considered. The taxpayer may have filed while the case is in suspense. Be alert to TCs 976 / 977 / 59X, which may indicate a return has been filed / secured. See Exhibit 4.8.11-5 for additional steps recommended during non-filer checks.
- (2) Contact the special agent (and cooperating revenue agent / revenue officer, if applicable) to determine whether the taxpayer has submitted / filed any returns during the criminal investigation / prosecution. IRM 25.1.3.4(6) requires that any returns secured during the criminal investigation be reflected on Masterfile / IDRS accordingly.

4.8.11.4.1.2  
(03-29-2017)  
**Six-Month Checks  
Specific to Fugitive  
Cases**

- (1) In order to better control and identify fugitive cases, Review Type 43, *Fugitive*, will be used. Fugitive cases should be reviewed at least every six months.
- (2) The special agent and / or cooperating agent, as the assigned investigators, have responsibility for the Service in locating the fugitives. Six-month check procedures in fugitive cases are the same as for all cases and/or non-filer cases, as applicable.

4.8.11.4.2  
(03-29-2017)  
**Statute Protection  
Procedures for Cases in  
Fraud and Grand Jury  
Suspense**

- (1) TS is responsible for protecting all civil assessment statutes for controlled returns held in Fraud and Grand Jury Suspense.
- (2) In addition to the six-month status check procedures in IRM 4.8.11.4.1 above, there are statute protection procedures specific to cases held in Fraud and Grand Jury Suspense. The following subsections cover these requirements.
- (3) Refer also to IRM 25.6, for more information regarding statute of limitation issues. For employment tax specific statute issues refer also to IRM 4.23.14, *Employment Tax Statute Control and Extension*.

4.8.11.4.2.1  
(03-29-2017)  
**Form 10498-B Intent to  
Commence Civil Action -  
Statute Protection**

- (1) At least each month an examination record control system (ERCS) *Statute Expiration Report* should be reviewed for all Status Code 32 and Status Code 36 inventory.
- (2) When the assessment statute (either the normal three-year ASER under IRC 6501(a) or the six-year ASER under IRC 6501(e), or any other applicable live statute due to an exception) is within 210 days of expiring and the case is still under the control of CI / DOJ, TS will prepare and submit Form 10498-B. Both the criminal and civil aspects should be carefully considered. This form is used to secure CI's recommendations to Examination / TS regarding civil assessment statute protection actions. The form indicates CI's recommendations regarding soliciting a statute extension consent (e.g., Form 872, *Consent to Extend the Time to Assess Tax*) and the issuance of a statutory notice of deficiency.
- (3) The Form 10498-B process is also described in IRM 25.1.4.3.8. For simplicity this process should generally be completed electronically via secure e-mail, unless not available. The form includes instructions on how it is to be completed. Always use the most current revision available. Any relevant supporting information should be "attached" to the Form 10498-B. The routing / approval process should be completed as follows:
  - a. TS manager will verify the information in the top section, and acknowledges their concurrence / approval by inputting their contact information, and preferably adding their digital signature. TS manager will forward the Form 10498-B and the relevant supporting information to the supervisory special agent (SSA).
  - b. The SSA, in conjunction with the special agent and CT Counsel if needed, will review the information and indicate CI's recommendations for the civil statute protection actions. The SSA will acknowledge their concurrence / approval by inputting their contact information, and preferably adding their digital signature. The SSA will forward the Form 10498-B, and the relevant supporting information, along with their mandatory written explanation for not taking civil actions (when applicable), to the special agent in charge (SAC) or assistant special agent in charge (ASAC), or other designee.

**Note:** If / when CI recommends **not** soliciting a consent and / or **not** issuing a statutory notice of deficiency it is mandatory that CI provide a written explanation. This explanation will generally indicate that such actions will imperil a successful prosecution, **and** that there is a reasonable assurance that a civil fraud penalty (and fraud ASSED) can be sustained for the year / return in question. Currently there is no designated format required for the written explanation, but it is often completed as a brief memo attached to the Form 10498-B.

- c. The SAC / ASAC will review the information and provide their concurrence / approval by **signing** the form, preferably with their digital signature. The SAC / ASAC will forward the Form 10498-B, written explanation (if applicable), and supporting information to the TS TM.
- d. The TS TM will review the information and provide their concurrence / approval with CI's recommendations by **signing** the form. The TS TM will forward the Form 10498-B, written explanation, and supporting information to the TS manager and / or fraud coordinator to take appropriate action.

**Note:** On rare occasions, if TS (and / or Examination) do not agree with CI's recommendations, the issue will be elevated to the next appropriate management level. For example, if it is known that the primary charges against an individual are not tax-related and the civil tax amounts are material, or the tax adjustments are from a related return which is not being pursued criminally, then a more in-depth discussion should occur between CI, Examination, and TS and Policy Statement 4-26 procedures should be initiated as appropriate. See IRM 1.2.13.1.11, *Policy Statement 4-26 (Formerly P-4-84)*.

- (4) When CI recommends approval to solicit a statute consent, refer to IRM 4.8.11.4.2.2.
- (5) When CI recommends approval to issue a statutory notice of deficiency, refer to IRM 4.8.11.4.2.3.
- (6) When CI recommends approval to allow the civil assessment statute to expire, refer to IRM 4.8.11.4.2.4.
- (7) It is critically important to note that the statute recommendations and determinations made on the Form 10498-B are only valid while the specific return is under the control of CI and / or DOJ. Once the criminal case is closed all civil assessment statute decisions are solely the responsibility of Examination (and / or TS), and all normal statute procedures per IRM 25.6 must be followed.

4.8.11.4.2.2  
(03-29-2017)

#### Approval for Soliciting a Statute Consent

- (1) When the signed Form 10498-B approving the solicitation of a consent is returned, it will generally indicate that solicitation should be made by mail. TS will prepare the appropriate consent (generally Form 872 or appropriate variation) in accordance with IRM 25.6.22, *Extension of Assessment Statute of Limitations By Consent*. TS will also prepare Letter 907, *Request to Extend Assessment Statute*. The statute consent(s) and transmittal letter(s) must be reviewed by the fraud coordinator and / or TS manager prior to issuance. The Letter 907, consent, and Pub 1035, *Extending the Tax Assessment Period*, will be mailed to the taxpayer(s) and power of attorney, if applicable. Copies will be maintained in the suspense monitoring file. If CI recommends solicitation in

person, the consent, letter, and publication will be provided to the CI special agent (SA) to present to the taxpayer(s).

- (2) If no response is received to the first solicitation by mail, a follow-up request on Letter 928, *Request to Extend Statute - Follow Up Letter*, is sent.
- (3) If no response is received or if the taxpayer or power of attorney (POA) respond indicating that they will not sign the consent, document the case file, notify the SA and cooperating RA (if applicable), and proceed accordingly.
- (4) If a valid signed consent is secured, it must be timely executed and a duplicate original (or copy if only one original was secured) returned to the TP / POA. Update the ASED on AIMS/ERCS, Masterfile, Form 895, and Suspense Control Sheet. Notify the SA and cooperating RA and proceed accordingly.

## 4.8.11.4.2.2.1 (03-29-2017)

### Contact With Taxpayers

- (1) Making contact with a taxpayer and / or power of attorney is generally not allowed while in suspense, other than soliciting consents with prior concurrence of CI. If a taxpayer contacts the fraud coordinator or TS manager, exercise great caution so an inappropriate disclosure does not occur. For example, the taxpayer may not be aware they are under grand jury investigation. The coordinator may answer questions about a statute consent form after approval has been obtained from CI to solicit the consent. However, any specific questions about the case should be directed to the special agent.

## 4.8.11.4.2.3 (03-29-2017)

### Approval for Issuing a Statutory Notice of Deficiency

- (1) When it has been determined that the civil assessment statute will be protected by issuing a statutory notice of deficiency, both the criminal and civil aspects should be carefully considered.

**Note:** If CI and TS / Examination cannot reach an agreement on issuing a SNOD, the issue needs to be elevated to the next appropriate management level, and the discussions covered in IRM 1.2.13.1.11 must be held.

- (2) When CI recommends that a statutory notice of deficiency may be issued via Form 10498-B, the fraud coordinator must evaluate whether the case file supports such action. If it is determined that additional development may be needed, coordinate such actions with CI (and the cooperating RA, if applicable).
- (3) When there are prior / subsequent period returns also in suspense, and / or other related returns / taxpayers in suspense, then additional discussions with CI for these other returns should also occur. Generally, statutory notices of deficiency and or examination reports, should be issued for all years and related entities at the same time. All appropriate notices / reports should be issued accordingly with CI's concurrence.
- (4) The SNOD will be prepared by the fraud coordinator or any other qualified RA reviewer. Refer to IRM 4.8.9, *Statutory Notices of Deficiency*, specifically IRM 4.8.9.16.3, *Open Criminal Cases*, and IRM 4.8.9.16.6, *Fraud Penalty - Joint Return*, for the procedures for preparing and issuing the notice(s). The taxpayer is not given the option to agree during the open criminal case. The taxpayer may either petition the Tax Court or take no action and let the notice default. Prior to sending the petitioned year(s) to Appeals or assessment paperwork to Centralized Case Processing (CCP), confirm proper processing of the case with CI.



- (5) The executed Form 10498-B approving issuance of the statutory notice of deficiency effectively removes the specific return(s) identified from suspense. Unless there are important features which require additional special handling, follow all normal processing procedures for the petitioned or defaulted notice.

4.8.11.4.2.4  
(03-29-2017)

**Allowing the Statute to Expire While in Fraud and Grand Jury Suspense**

- (1) To allow **any** live (e.g. IRC 6501(a), (c)(8), (c)(9), (c)(10), (e), etc.) statute to expire, an executed Form 10498-B must be secured as described in IRM 4.8.11.4.2.1. After permission is obtained to allow a statute to expire (meaning that the taxpayer did not execute a statute extension consent and Examination / TS concurs with a recommendation by CI to not issue the statutory notice of deficiency, or other assessment notice), Form 5348, must be used to update the statute. For cases in TS status, if any other live statute applies (for example, a six-year statute in the case of a 25% omission of income), it must also be relied upon and protected before updating the case to "CC". If more than one live statute is applicable, the most conservative live statute date is used on AIMS / ERCS, and Form 895 must be notated to explain any and all other applicable live statutes. If the six- year statute under IRC 6501(e) is applicable, the statute should be updated to the actual live numeric six-year statute date and not the alpha "NN" statute. Form 895 is updated and initialed by the coordinator and manager. Permission to allow a statute to expire using the Form 10498-B is only valid if the statute expires while it is under control of CI or the DOJ / AUSA.
- (2) The ASED in AIMS and ERCS will only be updated to alpha code "CC" once it is determined that all live statutes (after considering extensions and exceptions) are adequately protected and allowed to expire. See also IRM 4.8.11.3.5.3
- (3) If the return controlled in suspense was not timely filed (delinquent), the fraud coordinator must ensure that the statute of limitations on all applicable delinquency penalties are also addressed in the statute protection actions. The tax and applicable delinquency penalties under IRC 6651 (a) and IRC 6651 (f) for the amount of tax shown (reported) on the return must be assessed within the IRC 6651 (a) statute of limitations (normal three-year ASED). The IRC 6651 penalties on the amount of tax shown on the return are immediately assessable and are not subject to deficiency procedures. Any determinations to not assess the applicable penalties before their ASED expires must be approved (by SAC and TM) in writing, and should be included as an attachment to the Form 10498-B or equivalent statute protection documentation. The approvals should clearly indicate that the penalties under IRC 6651 (a) and / or IRC 6651 (f) are included in the statute protection determination(s) and are being allowed to expire (not being assessed) and why.
- (4) If it is determined that the delinquency penalties based on the tax reported on the return are approved to be assessed while in suspense, the fraud coordinator should coordinate the needed assessments with the field examiner and special agent. The field examiner is responsible for making the tax and penalty assessments on the secured delinquent returns. Refer to IRM 20.1.2.2, *Failure to File a Tax Return or to Pay Tax—IRC 6651*, and subsections thereunder, and IRM 25.1.7.7.1, *Assessment Procedure for the Fraudulent Failure to File (FFTF) Penalty*, for procedures on making the assessments. All IRC 6651 (f) fraudulent failure to file (FFTF) penalty proposals must be approved by Area Counsel. IRM 20.1.2.2.7.5.1 (2), *FFTF Penalty Assessment—Procedural Re-*

*quirements.* If the examiner is the cooperating RA on a grand jury investigation, consult the field TM to identify another examiner and manager to make the appropriate adjustments.

- (5) In the case of a delinquent Form 1065 or Form 1120-S, the applicability of the failure to file penalties under IRC 6698 and IRC 6699 should also be addressed. The statute of limitations is three years from the date the return is filed (or for SFR inputs when an agreement is reached at the entity level). If the case is unagreed and no return was filed, then there is no ASED, per IRC 6501 (c)(3). Refer also to IRM 20.1.2.3, *Failure to File a Partnership Return—IRC 6698*, IRM 20.1.2.4, *Failure to File Partnership Return Using Electronic Media*, and IRM 20.1.2.5, *Failure to File S Corporation Return—IRC 6699*.

**Caution:** Adjustments to erroneous income tax prepayment credits (e.g. false withholding) are not subject to deficiency procedures. IRC 6201(a)(3) reads as follows: “Erroneous income tax prepayment credits. If on any return or claim for refund of income taxes under subtitle A there is an overstatement of the credit for income tax withheld at the source, or of the amount paid as estimated income tax, the amount so overstated which is allowed against the tax shown on the return or which is allowed as a credit or refund may be assessed by the Secretary in the same manner as in the case of a mathematical or clerical error appearing upon the return, except that the provisions of IRC 6213(b)(2) (relating to abatement of mathematical or clerical error assessments) shall not apply with regard to any assessment under this paragraph.” If the erroneous prepayment credit is due to fraud, the exception to the statute of limitations under IRC 6501(c)(1) and (c)(2) do also apply, allowing assessment to be made at any time. For example, see the law analysis in IRS CCA 200014001. **However, the statute of limitations must be protected, and in general these adjustments should be made before the expiration of the normal three-year ASED under IRC 6501(a).**

4.8.11.4.2.4.1  
(03-29-2017)

**Common Statute  
Exceptions in Fraud and  
Grand Jury Suspense**

- (1) IRC 6501 is the law that establishes the statute of limitations and provides for the exceptions. IRM 25.6, covers the servicewide policies and procedures for controlling and protecting statutes.
- (2) There are various exceptions to the normal three year ASED under IRC 6501(a). Any and all of these may apply to cases in Fraud and Grand Jury Suspense, and all must be considered when protecting the statute of limitations on assessment. Overviews of the most common exceptions for cases in Fraud and Grand Jury Suspense are explained in the following subsections.

4.8.11.4.2.4.1.1  
(03-29-2017)

**Six-Year Statutes Under  
IRC 6501(e) Due to  
Substantial Omissions**

- (1) If a taxpayer omits from gross income an amount in excess of 25% of the amount of gross income reported on the return, and there is no adequate disclosure of the omission on the return, IRC 6501(e)(1)(a)(i) provides a six- year statute of limitations. The burden of proof is on the government. If a return contains a 25% omission of income, the three-year statute is close to expiring, and Form 10498-B has been properly executed to allow the three-year statute to expire, AIMS will be updated to reflect the live six-year numeric statute (alpha code “NN” will not be used by TS).

**Note:** An understatement of gross income by reason of an overstatement of uncovered cost or other basis is an omission from gross income. IRC 6501(e)(1)(b)(ii). This law is effective for returns filed after July 31, 2015, and

for returns filed on or before that date if the period for assessment of taxes has not yet expired as of July 31, 2015.

- (2) A computation detailing the 25% omission of income such as Exhibit 4.8.11-3 (or workpaper located in Office Documents in RGS) and a memorandum summarizing the facts to support the statute determination will be attached to Form 10498-B. Care will be exercised in preparing this computation, especially if the return contains income from a flow through entity. Refer to IRM 25.1.4.3.8.1(4) for the income to include in the omission of income computation. Some common errors are:
  - a. Using the wrong numerator and denominator,
  - b. Not using net capital gains,
  - c. Not using the partner's share of the partnership gross income,
  - d. Using figures from an amended return, and
  - e. Failing to exclude from omitted income any items adequately disclosed on the return as filed.
- (3) Refer also to IRM 25.6.1.9.5.3, *25% Omission* and IRM Exhibit 25.6.23-3, *Instructions for Updating the Statute on AIMS*, specifically the section *NN - IRC 6501(e): Substantial Omission of Items*.
- (4) IRC 6501(e) also provides for six-year statutes when other substantial omissions occur. These are less common in Fraud and Grand Jury Suspense cases, but are also important when considering statutes. Refer to their respective code, regulations, and cross-referenced IRM sections for more detailed information.
  - a. IRC 6501(e)(1)(A)(ii). An omission from gross income of more than \$5,000 attributable to certain foreign financial assets which are required to be reported under IRC 6038D. See also IRM Exhibit 25.6.23-5 and IRM Exhibit 25.6.23-3. For information regarding the penalties applicable refer also to IRM 20.1.9.22, *IRC 6038D - Information With Respect to Specified Foreign Financial Assets*.
  - b. IRC 6501(e)(1)(C). An omission from gross income of an amount properly includible therein under IRC 951(a) (constructive dividends paid to U.S. shareholders of foreign controlled corporations). See also IRM 4.61.7.5, *Determination of Amounts to be Included in Income General Rule*, and IRM Exhibit 25.6.23-3.
  - c. IRC 6501(e)(2). An omission of more than 25% of the gross estate or gross gifts from the respective estate tax (Form 706, *U.S. Estate Tax Return*) or gift tax (Form 709, *United States Gift (and Generation - Skipping Transfer) Tax Return*) returns. See also IRM 4.25.1.1.3, *Protection of Statute of Limitations*, and IRM Exhibit 25.6.23-3.
  - d. IRC 6501(e)(3). An omission of more than 25% of the tax properly includible on returns under subtitle D (excise taxes). See also IRM 4.24.6.3.12.3, *Six Year Period of Assessment under IRC 6501(e)(3) for Substantial Omissions of Excise*, and IRM Exhibit 25.6.23-3.

**Note:** Items c and d above apply to Estate, Gift, and Excise returns which we do NOT accept in TS Fraud and Grand Jury Suspense. They are included here for a general awareness in the event the issue arises on cases sent to TS in error.



4.8.11.4.2.4.1.2  
(03-29-2017)

**Fraud Statute and Other  
Exceptions Under IRC  
6501(c)**

- (5) It is important to remember that each live statute (three-year and six-year) must be protected separately. Therefore, before the six-year statute expires a new Form 10498-B must be executed, to allow the six-year statute to expire and rely on a fraud statute under IRC 6501(c).
- 
- (1) This subsection provides an overview of the statute exceptions under IRC 6501(c). The most common of these in Fraud and Grand Jury Suspense is of course fraud and non-filed returns. This section provides only a general awareness of the other exceptions under IRC 6501(c). There are additional special rules under IRC 6501 (e.g. sections (f) through (n)) which are not referenced here. For more detailed information on the exceptions under IRC 6501 (c) and other special rules under IRC 6501 refer to the code, regulations, and the IRM sections which deal with the specific issues.
  - (2) **False return and evasion.** Fraud is a common statute exception on cases in Fraud and Grand Jury Suspense. There is no statute of limitations on assessment on returns which include fraud. Before relying on a fraud statute all other statute exceptions must be considered. Refer also to IRM 25.1.6, and IRM Exhibit 25.6.23-3.
    - a. IRC 6501(c)(1) provides that in the case of a false or fraudulent return with the intent to evade tax, the tax may be assessed, or a proceeding in court for the collection of such tax may begin without assessment, at any time.
    - b. IRC 6501(c)(2) provides that in the case of a willful attempt in any manner to defeat or evade tax imposed by this title (other than tax imposed by Subtitle A or B), the tax may be assessed, or a proceeding in court for the collection of such tax may begin without assessment, at any time.
  - (3) **No return filed.** IRC 6501(c)(3) provides that in the case of failure to file a return, the tax may be assessed, or a proceeding in court for the collection of such tax may begin without assessment, at any time. Refer also to IRM 4.12.1, IRM 25.1.7, *Fraud Handbook - Failure to File*, and IRM Exhibit 25.6.23-3.
  - (4) **Extension by agreement.** IRC 6501(c)(4) provides an exception for the taxpayer and the Service to mutually agree on the period of the statute of limitations for assessment. Refer also to IRM 25.6.22 and IRM Exhibit 25.6.23-3. For information specific to consents for Employment Tax returns refer also to IRM 4.23.14.
  - (5) **Tax resulting from changes in certain income tax or estate tax credits.** IRC 6501(c)(5) states: "For special rules applicable in cases where the adjustment of certain taxes allowed as a credit against income taxes or estate taxes results in additional tax, see section 905(c) (relating to the foreign tax credit for income tax purposes) and section 2016 (relating to taxes of foreign countries, states, etc., claimed as credit against estate taxes)." Refer also to IRM 4.61.10.7, *Changes in the Amount of Foreign Taxes Claimed*, and IRM Exhibit 25.6.23-3.
  - (6) **Termination of private foundation status.** IRC 6501(c)(6) provides that in the case of a tax on termination of private foundation status under section 507, such tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time. Refer also to IRM 7.26.7, *Termination of Private Foundation Status*, and IRM Exhibit 25.6.23-3.

- (7) **Special rule for certain amended returns.** IRC 6501(c)(7) states: “Where, within the 60-day period ending on the day on which the time prescribed in this section for the assessment of any tax imposed by subtitle A for any taxable year would otherwise expire, the Secretary receives a written document signed by the taxpayer showing that the taxpayer owes an additional amount of such tax for such taxable year, the period for the assessment of such additional amount shall not expire before the day 60 days after the day on which the Secretary receives such document.” Refer also to IRM 25.6.1.9.4.2, *Amended Return*.
- (8) **Failure to notify Secretary of certain foreign transfers.** IRC 6501(c)(8)(A) states: “In general. -- In the case of any information which is required to be reported to the Secretary pursuant to an election under section IRC 1295(b) or under section IRC 1298(f), IRC 6038, IRC 6038A, IRC 6038B, IRC 6038D, IRC 6046, IRC 6046A, or IRC 6048, the time for assessment of any tax imposed by this title with respect to any tax return, event, or period to which such information relates shall not expire before the date which is 3 years after the date on which the Secretary is furnished the information required to be reported under such section.” Refer also to IRM Exhibit 25.6.23-6 and IRM Exhibit 25.6.23-3.
- (9) **Gift tax on certain gifts not shown on return.** IRC 6501(c)(9) states: “If any gift of property the value of which (or any increase in taxable gifts required under section 2701(d) which) is required to be shown on a return of tax imposed by chapter 12 (Gift Tax) (without regard to section 2503(b)), and is not shown on such return, any tax imposed by chapter 12 on such gift may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time. The preceding sentence shall not apply to any item which is disclosed in such return, or in a statement attached to the return, in a manner adequate to apprise the Secretary of the nature of such item.” Refer also to IRM 4.25.1.1.3.2, *Gift Tax Statute of Limitations*, and IRM Exhibit 25.6.23-3.
- Note:** Gift tax returns are NOT controlled in TS Fraud and Grand Jury Suspense. This item is included for awareness only.
- (10) **Listed transactions.** IRC 6501(c)(10) states: “If a taxpayer fails to include on any return or statement for any taxable year any information with respect to a listed transaction (as defined in IRC 6707A (c)(2)) which is required under IRC 6011 to be included with such return or statement, the time for assessment of any tax imposed by this title with respect to such transaction shall not expire before the date which is 1 year after the earlier of (A) the date on which the Secretary is furnished the information so required, or (B) the date that a material advisor meets the requirements of IRC 6112 with respect to a request by the Secretary under IRC 6112(b) relating to such transaction with respect to such taxpayer.” Refer also to IRM 4.32.2.7.2.2.4.1, *Listed Transactions*, IRM 4.51.2.5, *Coordinating Listed Transactions*, and IRM Exhibit 25.6.23-3.
- (11) **Certain orders of criminal restitution.** IRC 6501(c)(11) provides that in the case of any amount described in IRC 6201(a)(4), such amount may be assessed, or a proceeding in court for the collection of such amount may begin without assessment, at any time. Refer also to IRM 4.8.6 and IRM 25.26.1, *Criminal Restitution and Restitution-Based Assessments*.

**Note:** IRC 6501(c)(11) applies ONLY to the criminal restitution ordered by the court, the unlimited statute of limitations does NOT apply to the related civil tax assessments. This exception will not apply to the return(s) controlled on AIMS.

4.8.11.4.2.5  
(03-29-2017)  
**Monitoring Statutes on Uncontrolled Subsequent Year Returns**

- (1) Monitoring the assessment statutes for subsequently filed returns is also important even though they are not controlled on AIMS / ERCS. TS will coordinate with Examination and CI if these subsequent returns may warrant civil or criminal actions. Examination and / or CI will determine what actions, if any, will be taken on these returns. Refer to IRM 4.8.11.3.6.4 for the required steps for monitoring the assessment statutes for subsequent year returns.

**Note:** These uncontrolled returns do not require “statute protection” actions, unless determined that controls will be established. If civil controls are established by Field Examination they would be responsible for protecting the statutes.

4.8.11.5  
(03-29-2017)  
**Removing Cases from Fraud and Grand Jury Suspend for Civil Resolution**

- (1) This subsection focuses on the policies and procedures to follow when the criminal investigation has ended and the case is ready to be removed from suspense and assigned for civil resolution.

4.8.11.5.1  
(03-29-2017)  
**Receipt and Review of Criminal Investigation Closing Report (Form 13308)**

- (1) When the criminal aspects of the fraud case have been completed (e.g. criminal prosecution is concluded, or the criminal investigation is discontinued by CI or declined by DOJ), CI must notify TS and other functions / BODs. CI will send the Form 13308 and other required forms and information to the contact designated by the TS TM (e.g. TS Fraud coordinator, TS manager, TS tax examiner, “mailbox”, etc.) via secure e-mail. The receipt of the Form 13308 is used to advise civil functions that the criminal investigation has concluded on tax or tax-related investigations and civil activities may resume. Refer to IRM Exhibit 25.1.1-1, *Criminal Violations*, for a list of which criminal charges are generally considered tax or tax-related.

**Note:** When a criminal case includes court ordered restitution that is payable to the Service, CI will also forward Form 14104, *Notification of Court Ordered Criminal Restitution Payable to IRS*, and relevant supporting documents. The Form 13308 and relevant documents are also referred to as the “CI closing package” or “criminal closing package”.

- (2) IRM 9.5.14.15, *Criminal Investigation Closing Report*, briefly summarized below, explains CI’s requirements for what to include with the Form 13308.
  - a. The following items are required to be attached to the Form 13308 closing report we receive from CI, as applicable:
    - Judgment in a criminal case (common referred to as the J&C)
    - Copies of tax returns
    - Copy of the prosecution recommendation report, also known as the special agent report (except for grand jury investigations)
    - A copy of the investigation source document(s)

**Note:** Suspicious Activity Report, law enforcement and restricted documents are not to be included with the closing report.

- Description and location of all relevant public information developed during the grand jury investigation that can be used the civil resolution
- Copies of relevant public records such as search warrant affidavits, indictments, pleadings, etc.
- Additional information developed subsequent to the prosecution recommendation. See IRM 9.5.14.7.1.1.1, *Information Developed After the Investigation is Submitted for Prosecution*.
- Based on the knowledge of the special agent, potential for the collection of a significant amount of tax will be identified.

- (3) CI is required to provide complete and correct forms, as well as relevant supporting information, with their closing packages. As the first reviewer of the referral to Examination, it is the responsibility of TS to confirm that the closing package is complete and correct based on the information provided. When the closing package does not appear complete or correct, TS will contact CI with a detailed request to complete the package and / or correct the errors. The following gives a general overview of a complete and correct Form 13308 package. Also refer to IRM 4.8.6.2.2.1, *Perfecting the CI - CR Package*, for similar information in regards to reviewing Form 14104.

4.8.11.5.2  
(03-29-2017)  
**Initial Actions by  
Technical Services**

- (1) The TS fraud coordinator, or other designated TS personnel (e.g., personnel monitoring fraud e-mail inboxes), will take the following actions upon initial receipt of Form 13308 from CI:
- a. Review the Form 13308 and other documents included in the CI closing package to confirm that the package is accurate and complete.
  - b. If additional or corrected information is required, request it from CI.
  - c. If the TC 914 has not been released, coordinate with CI to have it released.
  - d. Review AIMS and ERCS to determine if the case is currently in Fraud or Grand Jury Suspense. If it is currently controlled in suspense, confirm the statute of limitations, and if the statute is short (less than 365 days remaining), the fraud coordinator must take **immediate** actions to protect the statute and proceed with the appropriate civil resolution. If controlled and the statute is already expired or has more than one year remaining, proceed following the normal procedural time frames.

4.8.11.5.3  
(03-29-2017)  
**Review of Form 13308  
and Related Information  
from CI**

- (1) The Form 13308 should be reviewed within 15 days of receipt from CI to review the outcome of the criminal case and to determine the appropriate civil actions. The Form 13308 used should be the most current revision of the form. The following line items of the Form 13308 should be reviewed for completeness and accuracy based on the information available.
- a. Confirm that *Part A, Section I – Form Routing*, is completed correctly. It should identify the correct names on the “To”: line, and that the appropriate functions on the “CC”: line are checked.
    - Check the transmittal e-mail to verify that the e-mail was sent to the functions identified on the “CC” line. If not, forward the package to the appropriate recipients as a courtesy or notify CI to send the package to all required recipients.

- b. Confirm that *Part A, Section II – Subject Identifying Information*, appears to be completed correctly.
  - Review IDRS command code INOLE to confirm the name and TIN for the subject, and any related businesses listed. The address should also match, but if it does not it will not be considered an “error” that must be corrected, as there may be a valid reason for the address mismatch.
- c. Review *Part A, Section III – Results of Investigation*, to determine how to proceed. This will determine how the remainder of the form should be completed.
  - Prosecution completed (confirm that sections IV through IX are completed)
  - Discontinued or Declined (confirm that sections VI through IX are completed)
- d. Confirm that *Part A, Section IV – Convicted Criminal Offense(s)*, is completed correctly.
  - Verify the offense(s) and period(s) by reviewing the Judgment and other relevant court documents provided (Indictment / Information, Plea, etc).
  - Verify the tax-related COP by reviewing the Judgment.
  - Confirm the probation officer (PO) contact information is provided. If a PO is not yet assigned, the form must provide general contact information for the appropriate US Probation Office.
- e. Confirm that *Part A, Section V – Restitution*, is completed correctly.
  - If “Yes” is checked by CI, confirm the Form 14104 is attached. Primary responsibility for “perfecting” the Form 14104 rests with the TS Centralized Restitution Coordinators (CRC). Refer also to IRM 4.8.6.2.2.1 if needed).
  - If “No” is checked by CI, an explanation is required.
- f. Review *Part A, Section VI - Cooperating Compliance Employee*.
  - Notate the cooperating RA information (as applicable) to ensure the case gets properly assigned.
  - If the criminal investigation was worked as an administrative (non-grand jury) investigation, the civil resolution should generally be assigned to the cooperating RA.
  - If the criminal investigation was worked as a grand jury case, the civil resolution should be assigned to another Examination group which does not include the cooperating RA.
- g. Review *Part A, Section VII - Summary of Public Records and Evidence Attached and / or Available*.
  - Special agent reports which do not contain grand jury information should be attached.
  - CI is required to provide complete copies of the applicable tax returns with the Form 13308 (IRM 9.5.14.15(2)(b)).

**Note:** The original tax returns should be retained by CI until it has been confirmed that compliance functions will not need / want them. This requirement is included in the instructions for Form 13308. In general, Examination will want the original returns and so TS generally should **not** give “concurrence” for CI to return the original tax returns back to the campus. If / when CI checks the box for “Originals returned to campus (with concurrence of TS)” and concurrence has not been provided, TS should discuss this with the SA / SSA.

-- Documents attached: Confirm CI provided each document indicated as “attached”.



-- Documents available upon request: If you determine that Examination will want the items checked, TS should request the documents as soon as possible.

- h. Review *Part A, Section VIII - CI Confirms the Following was Completed at the Close of This Investigation*.

-- Check Masterfile to confirm that TC 914 has been reversed with TC 912 (posted or pending). Confirm that TC 910 is posted (or pending) when there is tax-related COP (including restitution).

**Note:** It is not unusual for CI to forward the closing package to TS at the same time they submit the Form 4135, *Criminal Investigation Control Notice* to update Masterfile with TC 91X. Therefore, there may be instances where the Form 4135 may not have yet been processed by CI Scheme Development Center (SDC). If we see that CI submitted the Form 4135 for processing, but it has not yet posted we may proceed. A follow-up with CI (by TS, PSP, or Examination) is warranted if the TC 912 and/or TC 910 are not pending within two weeks of receiving the closing package.

-- If the criminal investigation involved criminal actions by an attorney, certified public accountant (CPA), enrolled agent, or enrolled actuary, CI is required to forward information to the IRS Office of Professional Responsibility (OPR).

-- If the criminal investigation involved a whistleblower claim, CI is required to forward Form 11369, *Confidential Evaluation Report on Claim for Reward*, and other relevant information to the Whistleblower Office.

- i. Review *Part A, Section IX - CI Contact Information*. Confirm it is complete.

- (2) If after reviewing the items detailed above, it is determined that the Form 13308 and closing package **is not complete or errors are identified**, the entire closing package should be returned back to the CI employee(s) listed in *Part A, Section IX* (or other established procedures with CI) with a detailed request of what needs to be fixed before it may be "processed". When returning the case to CI for correction, be sure to remind CI to send the revised / corrected closing package to all required recipients.
- (3) If after reviewing the items detailed above, it is determined that the Form 13308 and closing package are complete and appear correct, the case should be "processed" and the appropriate actions completed accordingly.

#### 4.8.11.5.4 (03-29-2017) Processing a CI Closing Package

- (1) The TS fraud coordinator will review the case to determine the appropriate civil resolution actions within 45 days of receipt from CI. Many closing packages received by CI may not require additional civil examination actions. Care should be taken to ensure that only cases with examination potential are sent to the field for examination.

**Reminder:** Even though a criminal investigation is discontinued by CI, the case may still have potential for a civil examination. In cases where insufficient information exists to support the development of the civil issues, the fraud coordinator may make a decision not to forward the case to the field. The fraud coordinator must document the reason for not pursuing civil action.

- (2) In cases involving a successful prosecution of tax or tax-related charges the case should generally be forwarded to the field for civil resolution because

there are indicators of fraud and tax non-compliance. However, the fraud coordinator is still required to evaluate the case and determine the civil examination potential. If the case includes Examination-related conditions of probation and / or assessable criminal restitution refer to IRM 4.8.11.6 and IRM 4.8.11.7, respectively, and follow the additional special procedures for these cases. For example, ERCS collateral records will be established to monitor cases with Examination-related conditions of probation.

- (3) The review to determine appropriate civil resolution actions should include, but is not limited to, the following:
  - a. Researching IDRS (filing history, information reporting program (IRP) info, etc.) to help determine the examination potential.
  - b. Reviewing the criminal case information provided with the CI closing package.
  - c. Researching PACER for additional relevant information.
  - d. Contacting the special agent and / or cooperating RA for additional relevant information, if warranted. If the case was a grand jury investigation, be mindful of grand jury secrecy rules.

**Note:** If it is determined (based solely upon the information received in the CI closing package) that the case should be referred to Examination, the referral should not be delayed while waiting for any additional information. Once received, the additional information will be forwarded to the appropriate Examination group.

- (4) The TS fraud coordinator will document the results of their review and determination of civil examination potential accordingly. Consideration should be given to IRM 25.1.6.2, *Procedures*, (specifically (7) through(10) regarding fraud penalty determinations), and IRM 4.20.2.2(5), *General Collectibility Considerations*, (regarding scope and collectability) when making this decision.

**Note:** All cases in Fraud or Grand Jury Suspense will generally be returned to the field for appropriate civil resolution.

- (5) If determined that civil action is warranted, the TS fraud coordinator will prepare a memorandum containing specific instructions for civil resolution (including COP and restitution procedures if applicable) of the case to the appropriate examination group or PSP, as applicable. Refer also to IRM 4.8.11.5.7.
  - a. If the case includes Examination-related COP, refer to IRM 4.8.11.6 and subsections thereafter.
  - b. If the case includes a restitution-based assessment (RBA), refer also to IRM 4.8.11.7.

- (6) If determined that civil examination action is NOT warranted, the TS fraud coordinator will document their determination accordingly. The case will be considered closed.

**Note:** If the TS fraud coordinator determines that insufficient information exists to support the development of the civil issues under Title 26 (including, but not limited to IRC 7201, IRC 7203, IRC 7206(1)), a decision not to forward the case to the field can only be made after obtaining Area Counsel approval. See IRM 25.1.6.2(9) requiring written Area Counsel recommendation or concurrence for non-assertion of the appropriate civil fraud penalty.

- a. If the case includes Examination-related COP refer also to IRM 4.8.11.6 and subsections thereafter.

**Note:** TS would be responsible for completing the applicable sections of Form 13308 and responding back to CI accordingly.

- b. If the case includes a RBA, refer also to IRM 4.8.11.7 and subsections thereafter.

- (7) Successfully prosecuted Title 18 cases with tax implications (e.g., filing false claims for refund, conspiracy to file false claims for refund, making false statements, money laundering, etc.) must also be considered whether there is sufficient information for civil action such as the assertion of the civil fraud penalty or fraudulent failure to file penalty. Refer also to IRM Exhibit 25.1.1-1, *Criminal Violations*, and IRM Exhibit 3.17.243-9, *Department of Justice Glossary*.

4.8.11.5.5  
(03-29-2017)

#### Case File Maintained in Suspense

- (1) **Fraud Suspense** - The fraud coordinator will retrieve the case from suspense and review the information submitted by CI and related criminal documentation to inform the examiner of the current status of the case. The fraud coordinator will prepare a memorandum (see IRM 4.8.11.5.7) to transmit the case back to the originating group (the Examination group which sent it to TS for suspense) for civil resolution instructing the group manager (and examiner) of the required procedures to complete the examination. The memo should include details of how the criminal case was completed, such as if the taxpayer pled guilty, was found guilty, or the criminal investigation was discontinued. This memo is hereafter referred to as the “civil resolution cover memo.”

**Caution:** Administrative cases can become a grand jury case during the CI investigation stage. Therefore, it is important the Form 13308 is reviewed when removing the case from suspense to ensure the proper procedures are followed regarding grand jury cases and potential assignments in the field.

- (2) **Grand Jury Suspense** - If the examiner who worked the civil examination prior to grand jury initiation was also added to the Rule 6(e) list and privy to grand jury information, that examiner is “tainted” and cannot work the civil resolution. If the group manager of that examiner was added to the Rule 6(e) list and was privy to grand jury information, that manager is also “tainted” and cannot have the civil resolution returned to his or her group. If the group manager of that examiner was not added to the Rule 6(e) list **and** was not privy to grand jury information, that manager may have the civil resolution assigned to his or her group as long as it is not assigned to any examiner who is “tainted” by grand jury information. If assistance is needed for assignment of the case, PSP may be consulted to help determine the appropriate group for the civil resolution. See IRM 4.8.11.5.8.2. As above for Fraud Suspense cases, the fraud coordinator will prepare the “civil resolution cover memo” (see IRM 4.8.11.5.7) to transmit the case back to the field for civil resolution instructing the manager and examiner of the required procedures to complete the examination. The memo should include details of how the criminal case was completed, such as if the taxpayer pled guilty, was found guilty, or the criminal investigation was discontinued.
- (3) The assessment statute date of each tax year controlled on AIMS / ERCS will be re-verified by the TS fraud coordinator. AIMS / ERCS will be updated if



necessary to reflect the most appropriate civil assessment statute. Prior execution of Form 10498-B notwithstanding, the correct civil statute for each tax year must be re-determined and a determination made regarding the best course of action to protect the government's interest with respect to assessment in light of the release of jurisdiction over the case by CI. The applicability of the three-year statute under IRC 6501(a), the six-year statute under IRC 6501(e), special purpose alpha statutes applicable in certain limited situations (for example, IRC 6501(c)(8), failure to notify Secretary of foreign transfers, "YY" / "AB" in the case of pre-sentencing closing agreements, etc.), and "open for fraud only" under IRC 6501(c)(1) will be properly considered. See IRM 25.6.23.6.6.2 in conjunction with IRM Exhibit 25.6.23-3.

- (4) The TS fraud coordinator is responsible for taking appropriate statute protection actions on imminent (less than 180 days remaining) statute returns controlled in suspense which are being reassigned to Examination. This includes soliciting statute extensions, securing TS or field TM approval to allow the statute to expire, or having a statutory notice of deficiency issued, as appropriate.

4.8.11.5.6  
(03-29-2017)  
**Case File Not Maintained  
in Suspense**

- (1) If no case file has been maintained in suspense (i.e., the case was never established on AIMS) AND the case warrants a civil examination, the fraud coordinator will send a referral to Examination consisting of the CI closing package, and any other available relevant case information, including the "civil resolution cover memo" (per IRM 4.8.11.5.7) to their designated local Examination Area PSP, generally via secure e-mail (or other mutually agreed secure method).
- (2) In addition, a cover memorandum from TS to PSP will be sent with the referral to Examination which includes instructions for PSP to review the case, establish AIMS controls for the civil resolution case, perform normal case building, and forward it to an appropriate field group for the civil resolution. In grand jury cases, this cover memorandum will identify the assigned cooperating grand jury examiner and manager (if any) and advise that the civil resolution case cannot be assigned to any examiner or manager "tainted" by grand jury information. Refer to Exhibit 4.8.11-8 for a sample template cover memo to PSP. Use of this template is not required.
- (3) The TS fraud coordinator is NOT responsible for securing a statute extension, securing TS TM approval to allow the statute to expire, or having a statutory notice of deficiency issued, as appropriate, on any returns being referred which are not controlled on AIMS.
- (4) Refer to IRM 4.8.11.5.8.2 for more information on PSP's responsibilities for civil resolution cases.

4.8.11.5.7  
(03-29-2017)  
**Technical Services  
Memorandum Regarding  
Civil Action**

- (1) The TS fraud coordinator will prepare a memorandum to Field Examination with information about the criminal and civil case (if in suspense), and instructions regarding the special closing actions required for these cases. The memo will be printed and enclosed on the top of the primary admin file. The memo (referred to as the "civil resolution cover memo") should include a discussion of the following, to the extent applicable:
  - a. Name of cooperating examiner (if any) and group number;
  - b. Results of criminal case (conviction / plea, charges, year(s));

- c. If the case was under grand jury investigation, a reminder to review IRM 25.1.5.5, *Civil Case Resolution*, so examiners and group managers who had access to grand jury information would not be assigned to the case for civil resolution, and only non-grand jury information is used for civil resolution;
- d. Civil statutes of limitations;
- e. Fraud penalty considerations (applicability of collateral estoppel per IRM 25.1.6.4, *Collateral Estoppel*, need to prove fraud to preserve assessment statute of limitations, IRM 25.1.6.2(9) requirement for counsel concurrence if a fraud penalty is not asserted on a successfully prosecuted tax case involving additional assessments);
- f. Status of subsequent years (requirement to consider, comment upon, and include in examination as warranted);
- g. Special examination related conditions of probation requirements (see IRM 25.1.4.5, *Special Conditions of Probation*, and IRM 4.8.11.6);
- h. Criminal restitution (see IRM 4.8.6 and IRC 6201(a)(4);
- i. Related returns;
- j. Applicability of fraud penalty to non-target spouse (see IRC 6663(c) );
- k. Relief from joint and several liability considerations, when warranted (see IRM 25.15, *Relief From Joint and Several Liability*, IRM 4.11.34, *Innocent Spouse*, and Form 8857, *Request for Innocent Spouse Relief*);
- l. Collectibility considerations (see IRM 4.20.2.2(5)(c);
- m. Instructions for completing Form 13308 as applicable when there is examination-related conditions of probation, and the routing of a completed copy to CI, TS, and other COP / restitution contacts as applicable;
- n. Availability of fraud technical advisor (FTA) to assist with civil fraud penalty development / write-up, if needed; and
- o. Closure through TS for mandatory review.

**Reminder:** There are situations where cases are not required to close through TS for mandatory review (e.g., discontinued investigations, successfully prosecuted Title 18 with no examination-related COP or restitution)..

- (2) For a suggested memo format and language, for the “civil resolution cover memo”, refer to Exhibit 4.8.11-7. Use of this template is not required

4.8.11.5.8  
(03-29-2017)

#### Routing of Case From Technical Services

- (1) When open in suspense, the case is to be transferred back to the originating group (the Examination group which sent it to TS for suspense). If the Examination group later determines to reassign the case they may do so accordingly.
  - a. The exception to this rule is when the examiner and / or manager have been exposed to, or made privy to, grand jury information. This typically occurs when the examiner is assigned to be the cooperating RA on the grand jury investigation. Generally both the examiner and manager are added to the grand jury Rule 6(e) list by CI when they are involved in the grand jury investigation. If it is unclear if the originating examiner and / or manager are “tainted”, then the fraud coordinator should request confirmation in writing from the special agent regarding the examiner’s and manager’s involvement in the grand jury investigation. When the examiner and / or manager are “tainted” the case must be assigned to another Examination group which is not “tainted”. TS may request assistance from PSP to re-assign the case if needed.

- (2) When not open in suspense, the case will be transferred to the local Examination Area PSP to be established on AIMS and assigned by PSP.
- (3) The case should generally be transferred from TS to the Examination group or PSP for appropriate civil resolution within 45 days of receipt of Form 13308 from CI. The exceptions to this general rule are as follows:
  - a. When the ASED is imminent (less than 90 days) consideration must be given for the facts and circumstances to determine the appropriate actions. Coordination with the Examination group and / or PSP is mandatory.
    - If the case is controlled on AIMS, it must be reviewed to determine if a Letter 531, *Statutory Notice of Deficiency*, should be issued instead of returning the case for further examination. This will depend on how well developed the case was at the time it was accepted for suspense. See IRM 4.8.11.5.5(4).
    - If the case is not already controlled in suspense, careful consideration must be given to the imminent ASED based on the facts available. If it is unlikely that an examination may be completed before the ASED expires, exceptions to the statute of limitations must be considered. For example, if a six-year or fraud statute appears likely, consideration should be given to opening the AIMS controls only AFTER the normal ASED expires. If exceptions to the statute of limitations are unlikely to be supportable, consider not referring the case for examination.
  - b. When the case is not controlled on AIMS and includes assessable criminal restitution, the case generally is not referred to PSP until the restitution-based assessment (RBA) process is completed. Refer to IRM 4.8.6.3(3) for more detailed guidance and exceptions.

4.8.11.5.8.1  
(03-29-2017)

**AIMS / ERCS Codes for  
Civil Resolution Cases**

- (1) **AIMS Freeze Code "P"**: Ensures the case is returned to the TS fraud coordinator prior to AIMS being updated to Status Code 90. Freeze Code "P" applies when either of the following apply:
  - a. Successfully prosecuted under Title 26 due to the IRM 25.1.6.2(9) requirement for Area Counsel's concurrence of non-assertion of the applicable fraud penalty.
  - b. Successfully prosecuted (under any Title) with Examination-related conditions of probation due to the IRM 25.1.4.5 requirement for Field Examination TM to provide a memo to CI regarding the taxpayer's level of compliance with the COP.
- (2) **Aging Reason Codes**: These following aging reason codes will be utilized for tracking civil resolution cases as appropriate:
  - a. Aging Reason Code 16 - *Conditions of Probation Cases (Administrative or Grand Jury)*
  - b. Aging Reason Code 17 - *Grand Jury Cases Returned for Civil Disposition (without conditions of probation)*
  - c. Aging Reason Code 18 - *Administrative Cases Returned for Civil Disposition (without conditions of probation)*
- (3) **Status Codes**: The case (from suspense) will be transferred to Examination in Status Code 17, *Fraud*. When not held in suspense the case is initially assigned to Examination by PSP in Status Code 10, *Assigned - No Time Applied*, with instructions to update to Status Code 17 once started. The case

remains in Status Code 17 until it is determined that fraud does not apply. At which point it will be updated to Status Code 12 or other applicable status as determined by Examination.

- (4) **Project Codes:** Generally PSP will determine the appropriate project codes to be used.
- (5) **Tracking Codes:** Generally PSP will determine the appropriate tracking codes to be used. However, see IRM 4.8.11.4.2.1(2) for tracking codes for assessable criminal restitution cases.

4.8.11.5.8.2  
(03-29-2017)  
**Responsibilities of  
Planning and Special  
Programs (PSP)**

- (1) Planning and Special Programs (PSP) will follow current procedures to establish AIMS / ERCS controls. Cases will be established utilizing the information provided by TS.
- (2) The case file assigned to the Examination group should include (at a minimum) the following:
  - The CI closing package provided by TS, and
  - The TS "civil resolution cover memo" (see IRM 4.8.11.5.7).
- (3) PSP will notify the TS fraud coordinator when the case has been assigned to Field Examination and provide the appropriate examination group code (EGC) contact information.
- (4) If PSP disagrees that the case should be referred to Examination for civil resolution, the reasons for disagreement should be clearly documented. PSP must consider IRM 25.1.6.2(9) (requiring Counsel's concurrence for not asserting fraud on successfully prosecuted tax cases) and IRM 4.20.2.2(5)(c) (prohibiting the limitation of scope due to collectability). For all successfully prosecuted tax cases, it becomes PSP's responsibility to obtain the required Counsel concurrence for non-assertion of a fraud penalty if an examination will not be pursued. If the case includes Examination-related conditions of probation, PSP becomes responsible for determining compliance with COP and completing the appropriate sections of Form 13308 and notifying CI of their determinations. Copies of the Counsel concurrence memo, and completed Form 13308 must be forwarded to TS by PSP.
- (5) Upon request by TS, PSP is also responsible for assisting the TS fraud coordinator to assign a case from Grand Jury Suspense to Examination when the originating Examination group is prohibited from working the civil resolution of the case due to any grand jury "taint" issues.

4.8.11.5.9  
(03-29-2017)  
**Responsibilities of Field  
Examination on Civil  
Resolution Cases**

- (1) Upon receipt of a civil resolution case the receiving group manager will note the instructions provided by TS and assign the case to a qualified examiner. If the case is an Examination-related COP case, the manager should highlight the special instructions in the memo. COP monitoring is a shared responsibility between TS, PSP, and Field Examination. Refer also to IRM 4.8.11.6 for the additional requirements for civil resolution cases with examination-related COP and IRM 4.8.11.7 for the additional requirements for civil resolution cases with RBA. Refer to IRM 4.8.11.8 for more information on the review process when the civil resolution case is closed by Examination.

- (2) In accordance with normal examination procedures, the assigned examiner will consider the civil resolution requirements of the case and take appropriate examination actions with respect to the prosecution years, relevant conduct years, and related returns.

**Note:** If after a successful prosecution of Title 26 charges involving additional tax assessments, the examination results in a determination that insufficient evidence exists to support the civil fraud penalty under IRC 6663(a) or IRC 6651(f), it is the group's responsibility to secure the required counsel concurrence to close the case without assertion of a fraud penalty. IRM 25.1.6.2(9).

- (3) When the criminal investigation included preparer and / or promoter charges, the corresponding civil penalties and / or injunction actions also **must** be considered during the examination. Refer to IRM 20.1.6, *Preparer, Promoter, Material Advisor Penalties*, IRM 4.11.51, *Return Preparer Program*, and IRM 4.10.6, *Penalty Considerations*, for information on asserting civil penalties and seeking injunctions.
- (4) If after examination, the statute of limitations is determined to have expired and assessment is barred, a Form 3999, *Statute Expiration Report*, is required if the tax year / return at issue was open in AIMS status below 80 or is being examined but is not controlled on AIMS as of the date of statute expiration. Refer to IRM 4.2.1.9, *Statute Expiration Reports*, and IRM 4.2.1.10, *Taxpayer Notification of Assessment Statute Expiration and Acceptance of Voluntary Payments on Expired Statute Returns When Taxpayer Was Contacted for Examination*, and subsections thereunder. See also Exhibit 4.8.11-6.
- (5) All tax years of a civil resolution case, with AIMS Freeze Code "P", regardless of disposal code, and all civil resolution preparer penalty cases must be closed to TS for mandatory review in Status Code 21. Check the box on Form 3198 for *Civil Disposition of Joint Investigation - AIMS Freeze Code "P" (includes Criminal Restitution)* to ensure proper routing. TS will review the case to ensure all required civil resolution procedures have been completed.
- (6) Refer to IRM 4.8.11.6 for the additional requirements for civil resolution cases with conditions of probation (COP), and IRM 4.8.11.7 for the additional requirements for civil resolution cases with criminal restitution.

4.8.11.6  
(03-29-2017)  
**Special Features for  
Civil Resolution Cases  
with Tax-Related  
Conditions of Probation**

- (1) The courts routinely order an individual successfully prosecuted for tax crimes to comply with the tax laws. These orders are provided in the Judgment as special conditions of supervision, or conditions of probation (COP). Failure of the taxpayer to comply with the COP may result in revocation of probation and incarceration of the taxpayer. Common tax-related or Service-related COP include, but are not limited to, the following:
  - Filing accurate delinquent and / or amended returns.
  - Cooperating with the IRS to determine taxes due and owing.
  - Payment in full of, or entering into an installment agreement for all assessed tax liabilities.
  - Payment of restitution to the Service.
  - Filing Form 8821, *Tax Information Authorization*, to allow the Service to disclose tax information to the probation officer.



- (2) Examination-related COP generally does **not** include the following (these common conditions are generally considered Service-related or Collection-related conditions):
  - Payment of restitution to the Service.
  - Payment in full, or entering into installment agreement, for all outstanding liabilities.
  - Filing Form 8821 or Form 2848, *Power of Attorney and Declaration of Representative*.
- (3) CI and SB/SE share primary responsibility for the Service in ensuring compliance with court orders of tax-related COP. TE/GE, LB&I, and W&I also share responsibilities for the cases within their divisions.
- (4) SB/SE Examination has primary responsibility for examination-related, or assessment-related COP. TS is charged with the responsibility of ensuring that Field Examination is completing all of their requirements for cases with examination-related COP, as provided in IRM 25.1.4.5, and the following subsections.
- (5) SB/SE Collection Advisory is charged with the responsibility of ensuring that Collection is completing all of their requirements for cases with collection-related COP, as provided in IRM 5.1.5, *Balancing Civil and Criminal Cases*.
- (6) The following subsections focus on the policies and procedures which are specific to Examination, Field and TS, for cases with examination-related or assessment-related COP.

4.8.11.6.1  
(03-29-2017)

**Responsibilities of  
Examination for  
Tax-Related Conditions  
of Probation**

- (1) While CI, Collection, and Examination all share responsibility for monitoring compliance with the conditions of probation relating to the Service, Examination is primarily responsible for ensuring that the appropriate examination actions are taken on completed tax and tax-related criminal investigations and monitoring the conditions of probation which relate to the examination process. Examination's responsibilities for probation monitoring are shared between Field Examination, PSP, and TS. It is important that the TS fraud coordinator be familiar with Field Examination's role in probation monitoring, as outlined below.
- (2) IRM 25.1.4.5, provides the overview of Examination's responsibilities on COP cases. In addition to the civil resolution actions listed in IRM 4.8.11.5.9, Field Examination, in coordination with TS and PSP (as applicable), is responsible for the following civil resolution actions on COP cases:
  - a. Following up with CI if TC 914 is not reversed, and TC 910 is not added, on a completed criminal investigation case involving Service-related conditions of probation.
  - b. Making a determination whether civil assessments of tax, interest, and / or penalties are appropriate, and to make such assessments in accordance with normal examination procedures.
  - c. Ensuring that appropriate examination action is taken on cases requiring filing of additional returns, or assessment of additional tax and / or penalties.
  - d. Determining whether the fraud penalty should be asserted on prosecution years, relevant conduct years, and related returns.
  - e. Monitoring the conditional probation expiration date. Refer to IRM 4.8.11.6.1.1.



- f. Responding to CI regarding the taxpayer's level of compliance with Examination-related COP. See also paragraphs (3) and (4) below.
  - g. Closing the case to TS for mandatory review.
- (3) In cases in which the taxpayer refuses to comply with probation terms relating to the examination process, the Field Examination TM is responsible for **immediately** notifying the SAC, and / or designated CI probation liaison of the non-compliance with COP once identified, and for requesting follow-up action by CI through the US Probation Office and / or Court to enforce the conditions of probation, as appropriate.
- In cases in which action by CI is requested, Field Examination is responsible for following up with CI regarding actions taken to enforce compliance. Four-way conferences (RA, GM, SA, SSA) and consultation with a FTA should be utilized by Field Examination as appropriate to decide upon and facilitate the most appropriate course of action.
- In cases in which CI requests enforcement action through the US Probation Office and / or Court, the examiner should ask CI to provide executed copies of documents submitted by the probation office to the court for the civil file.
- a. The most common condition of probation relating to the examination process is to cooperate with the Service. Examples of failure to cooperate with the Service in the examination process include, but is not limited to, the following:
    - Failure to file original or amended returns.
    - Filing false or frivolous returns (e.g., return with all zeros or an altered jurat).
    - Failure to schedule appointments and / or appear at scheduled appointments.
    - Failure to provide requested records in a timely manner.
- (4) For all probation cases in their jurisdiction, the Field Examination TM is responsible for sending a memorandum to the SAC and / or the designated CI probation liaison, regarding the taxpayer's level of compliance with the Examination-related (or assessment-related) COP by the earlier of the date the case is closed by Examination or 180 days prior to the expiration of the probation period. IRM 25.1.4.5(6). This memorandum to the SAC is often referred to as the "180 Day memo" or "COP Compliance Memo". A copy of this memo is required to be sent to the TS fraud coordinator for monitoring purposes.
- Note:** This requirement is in addition to the requirement to immediately report any non-compliance that is identified during the probation period, per paragraph (3) above.
- (5) If a determination is made to not conduct an examination on an examination-related COP case, the completion of the "COP compliance memo" is not required. However, the Form 13308 must clearly reflect why the case was not examined, and if it was successfully prosecuted under Title 26, Counsel concurrence was secured.
- (6) All examination-related COP cases (regardless of disposal code) must be closed to TS in Status Code 21 for mandatory review. The *Civil Disposition of Joint Investigation - AIMS Freeze Code P* block of Form 3198 must be checked to ensure proper routing.

**Note:** This applies even if the AIMS Freeze Code "P" is not showing on AIMS.

4.8.11.6.1.1  
(03-29-2017)

**The Conditional  
Probation Expiration  
Date**

- (1) The conditional probation expiration date is the date on which the defendant's term of probation ends.
- (2) Non-compliance with the terms of probation must be reported to CI prior to this date so CI can request the court take corrective actions. Therefore non-compliance should be reported as soon as it is identified. Additionally, Examination and Collection will report whether the conditions of probation relating to their respective functions have been met or not met prior to closing their cases.
- (3) The probation period does not begin until the subject is released from confinement.
- (4) The conditional probation expiration date is initially calculated as follows:
  - a. Starting Date: Date of sentence or court ordered date of surrender (generally the date of the Judgment)
  - b. Add: Period of incarceration ordered (this may change based on various circumstances)
  - c. Add: Period of supervised release or probation
  - d. Subtract: One day

**Note:** When home confinement is a special condition of supervised release, this does not change the calculation. The period of home confinement is included within the period of supervised release.

4.8.11.6.2  
(03-29-2017)

**Responsibilities of  
Technical Services to  
Monitor Examination-  
Related Conditions of  
Probation**

- (1) In coordination with CI, Collection Advisory, and Field Examination, the fraud coordinator will monitor all cases with conditions of probation relating to the examination process. In order to carry out this responsibility, TS will take the following actions:
  - a. Each case involving Examination-related COP will be controlled on ERCS for monitoring purposes. Refer to IRM 4.8.11.6.2.3.
  - b. TS will be responsible for maintaining a probation monitoring "dummy" file (e.g., hardcopy or electronic) for each taxpayer with Examination-related COP. The "dummy" file will contain the following (at a minimum):
    - Form 9984, (or equivalent) describing the actions taken by TS,
    - A copy of the TS "civil resolution cover memo" (IRM 4.8.11.5.7) and other instructions to PSP and / or the Examination group,
    - Relevant court documents, including the Judgment listing the conditions of probation,
    - CI closing package, specifically Form 13308 with the appropriate responses by Examination and TS in section X (as applicable),
    - A copy of the "180 Day memo / COP Compliance Memo" from Field Examination TM to the SAC (IRM 25.1.4.5(6) and (7)),
    - Copies of written contacts with Examination, CI, Collection, Appeals, etc. related to probation monitoring, and
    - Other relevant information as determined warranted.
  - c. A spreadsheet must also be used to monitor probation cases and to reconcile information with CI and Advisory.
  - d. TS fraud coordinator will monitor the Examination-related COP inventory monthly via ERCS collateral records and spreadsheet(s) to determine which cases are approaching the probation expiration date. To ensure CI is notified by no later than six months prior to the expiration of the term of

probation, at approximately seven months prior to the expiration of the term of probation, the TS fraud coordinator will contact the group manager assigned the case to request a copy the “180 Day memo” / “COP Compliance Memo” issued by the Examination Field TM to the SAC. Refer also to IRM 4.8.11.6.2.3.4.

- e. Upon receipt of the copy of the Field Examination TM’s response to CI regarding the taxpayer’s compliance or non-compliance with the terms of probation (“COP Compliance Memo”), the TS fraud coordinator will:
  - Update the ERCS collateral record and probation monitoring spreadsheet
  - Place a copy of the response in the “dummy” probation file, and
  - Ensure a copy of the memo is sent to Advisory (\*SBSE EEF Dallas Restitution) and to CI if Examination did not already do so.
- f. Closed COP cases arriving in TS, due to the AIMS Freeze Code “P”, will be reviewed to ensure the following:
  - CI has been properly notified by Field Examination of compliance or non-compliance with the terms of probation,
  - The TS probation monitoring records (ERCS, “dummy” file, etc.) have been updated,
  - A copy of the response to CI has been secured, and
  - All other requirements are completed as applicable. Refer to IRM 4.8.11.8 and subsections thereafter.

**Note:** See IRM 4.8.11.6.2.4 and IRM 4.8.11.8.2 for additional review procedures on Examination-related COP cases.

- g. TS’ examination-related COP monitoring responsibilities end when the civil examination is completed, the mandatory review by TS is completed, and the case is transferred to CCP (or PSP) for closure accordingly.
- h. TS will notify Collection Advisory via secure e-mail that the civil examination has concluded and is being sent for closure. The notification will include a brief summary of the civil examination results. This assists with timely collection actions.

**Note:** Refer to IRM 4.8.11.6.2.5 for the procedures to follow when transferring the COP case to Appeals.

- (2) The “dummy” probation file will be retained in accordance with the standard retention policy for IRS Examination fraud case files, as provided by Document 12990, *Records Control Schedules (RCS), Schedule 23, Tax Administration – Examination, Item 42, Examination Case Files, Item 42(a), Fraud Cases, Job No. N1-58-88-4 (located on page 247 on the 04-2014 revision)*.

- a. The “dummy” files will be retained at the local TS office (or centralized site) for three years after TS’ last required action.
- b. At the end of this three year period the “dummy” probation files will be reviewed and retired and / or disposed of following the instructions on the following website: <http://mysbse.web.irs.gov/opsupport/hc/facilitiesorganizationalsupport/orgsupportteam/recordsmgmt/resources/16653.aspx>
  - The items included in the “dummy” file which are strictly “copies” of items which are otherwise filed with the civil examination case file and / or CI’s criminal investigation case file will be “disposed of” in accordance with the *Disposal of Records Held On-Site* instructions.
  - The items included in the “dummy” file which are “originals” **not** otherwise filed with the civil examination case file and / or CI’s criminal investi-

gation case files, or those items which are determined by the fraud coordinator or manager to warrant further retention will be “retired” to the Federal Records Center in accordance with the *Retirement of Records to the Federal Records Center* instructions.

4.8.11.6.2.1  
(03-29-2017)

**Confirming  
Examination-Related or  
Assessment-Related  
COP**

- (1) When the case includes Examination-related and / or assessment-related conditions of probation / supervision (as opposed to Service-related and Collection-related), continue with the procedures detailed in IRM 4.8.11.6.2.3 and subsections thereafter. Common Examination-related and / or assessment-related COP include, but are not limited to the following:
  - Filing of correct delinquent and / or amended returns
  - Cooperating with the Service to determine taxes due and owing
- (2) Examination-related COP generally does not include the following (these common conditions are generally considered Service-related or Collection-related conditions):
  - Payment of restitution to the Service
  - Payment in full, or entering into installment agreement, for all outstanding liabilities
  - Filing Form 8821 or Form 2848.
- (3) When the case does not include Examination-related COP, an ERCS COP collateral record is not required. TS has no COP monitoring responsibilities.
- (4) When the case does include Examination-related COP, an ERCS COP collateral record will be established as provided in IRM 4.8.11.6.2.3.1.

**Note:** When a case includes Examination-related COP and assessable criminal restitution there will be both an ERCS COP collateral record and an ERCS Restitution (REST) collateral record established for the case (at least for part of the time the case is open).

4.8.11.6.2.2  
(03-29-2017)

**Acknowledging Receipt  
and “Acceptance” of  
Form 13308**

- (1) When the case includes Examination-related COP TS is required to notify CI to acknowledge receipt and “acceptance” of the case. The following actions are completed to acknowledge TS’ receipt and acceptance of the COP case from CI.
  - a. Upon completion of the initial review and perfection actions (see IRM 4.8.11.5.3), the TS employee which completed the steps to review the closing package and confirm Examination-related COP must fill out Form 13308, *Part B, Examination (Technical Services and Field)*, Section X – *For All Conditions of Probation Cases*, item a) indicating the date the Form 13308 was received by TS, and who “processed / accepted” the form.
  - b. The Form 13308 will then be sent via secure e-mail to the CI Field Office Conditions of Probation coordinator identified in *Part A, Criminal Investigation*, Section IX, *CI Contact Information* (or in accordance with your local procedures/agreements) and “\*\*SBSE EEF Dallas Restitution” (sbse.eef.dallas.restitution@irs.gov).
  - c. The acknowledgement should be sent to CI within 15 days of receiving the complete and accurate Form 13308 and closing package.

4.8.11.6.2.3  
(03-29-2017)  
**Monitoring  
Examination-Related  
Conditions of Probation  
Using ERCS**

- (1) TS will establish ERCS collateral records for all taxpayers with Examination-related conditions of probation (COP) which are referred for additional civil resolution to keep track of the active COP inventory at the group and national level. The procedures outlined in this subsection are mandatory. However, procedures that reflect a specific TS employee with responsibility for a task can be modified at the discretion of the TM. The ERCS collateral record should be established when the determination to refer the case for civil resolution is completed (i.e., within 45 days of receipt from CI).

4.8.11.6.2.3.1  
(03-29-2017)  
**Establishing COP  
Collateral Records in  
ERCS**

- (1) Form 5345-D, *Examination Request-ERCS Users* (or equivalent) will be completed to establish the ERCS COP collateral record. Form 5345-D does not have line / item numbers to reference, but the sections are self-explanatory.
  - a. Check the box for "Control Collateral Examination."
  - b. Enter your TS group codes: PBC, SBC, EGC.
  - c. Enter the ERCS identification (ID) # and name of the employee to which the collateral record will initially be assigned to review for civil resolution actions.
  - d. Taxpayer Name: Enter in the following format:
    - IMF: "COP-Last Name, First Name,(optional) Middle Initial", (e.g., John J. Smith would be entered as "COP-Smith, John, J".
    - BMF: "COP-Business Name", (e.g., Smith, Inc. would be entered as "COP-Smith, Inc".
  - e. Taxpayer Address: Optional
  - f. TIN: Enter the taxpayer identification number of the defendant (generally the individual's social security number (SSN)).

**Note:** The collateral record is established for the defendant whom is ordered with the Examination-related COP per the Judgment. This is generally an individual, but in rare circumstances may be a business entity.
  - g. MFT: Enter the applicable master file tax account code (MFT) (generally MFT 30).

**Note:** Refer to Document 6209, *IRS Processing Codes and Information*, Section 2.2 - *List of Returns and Forms*, or IRM Exhibit 3.12.21-4 *MFT and Tax Class Chart* for a listing of the appropriate MFT codes.
  - h. Form Type: Enter the applicable return form based on the defendant (generally Form 1040, *Individual Income Tax Return*).
  - i. Tax Period: Enter tax period 1989 for the tax year (YYYY) for all COP collateral records. Enter the month (MM) as follows:
    - For income tax returns (MFT 30, 02, 06, etc.) use 198911.
    - For employment tax return Form 941, *Employer's Quarterly Federal Tax Return*, (MFT 01) use 198903.
    - For employment tax return Form 940, *Employer's Annual Federal Unemployment (FUTA) Tax Return*, (MFT 10) use 198912.

**Note:** If there is an open ERCS record for the same MFT and tax period as the default entries above already in the system (e.g. a corporate defendant with a fiscal year end of 11, with an open 1989 examination), the COP collateral should be establish with the month prior to the actual ERCS records month. For example, the fiscal year

taxpayer on ERCS with a period ending of 198911 will have the ERCS collateral record built for 198910.

- j. Activity Code: Enter as follows:
    - 272 - For all IMF returns ( Form 1040, Form 1040-A, *Individual Income Tax Return*, Form 1040EZ, *Income Tax Return for Single and Joint Filers With No Dependents*, etc.)
    - 203 - Form 1120, *U.S. Corporation Income Tax Return*
    - 234 - Form 1120-S
    - 481 - Form 1065,
    - 464 - Form 940
    - 465 - Form 941
  - k. Source Code: 70 - *Referrals* (regardless of MFT)
  - l. Status Code: 38 - *Suspense*
  - m. Enter the default ASED statute date as if the applicable 1989 return (MFT) type was timely filed and showing an alpha "OO" fraud statute. For example:
    - Form 1040 (MFT 30) COP collateral record would show the ASED of 04/OO/1993 (04/15/1993 with an "OO" alpha fraud statute).
    - Calendar year Form 1120 (MFT 02) COP collateral record would show the ASED of 03/OO/1993.
    - Form 940 (MFT 10) COP collateral record would show the ASED of 04/OO/1993.
  - n. Tracking Code: No entry or 0000
  - o. Project Code: 0017 - *Conditions of Probation*
  - p. Technical Services Code (TSC) for the TS group
  - q. Claim Amount: Leave blank
  - r. Special Message / Push Code: Leave blank
  - s. POD: Leave blank or enter your POD code
  - t. Related Return Indicator: Leave blank
  - u. Aging Reason Code: Leave blank
  - v. TEFRA Indicator: No
  - w. Do you want the original return: No
  - x. Do you want labels: No
  - y. Joint Committee: No
  - z. Foreign Control: No
  - aa. Is case LB&I / coordinated industry case (CIC): Not applicable
  - ab. Control PBC: 217 (regardless of your PBC)
  - ac. Related Return Information Section: Leave blank
  - ad. Reason for request: "Examination-related COP monitoring"
  - ae. Follow-Up Actions: Leave blank
  - af. Type name of employee completing Form 5345-D (or equivalent), sign (electronic or manual) and date
- (2) The ERCS COP collateral will be assigned initially with the following ERCS review type and suspense type:
- a. Review Type: 11 - *Conditions of Probation*
  - b. Suspense Type: Refer to IRM 4.8.11.6.2.3.2 for the appropriate suspense types.

4.8.11.6.2.3.2  
(03-29-2017)

#### ERCS Updates for COP Collaterals

- (1) It is critical to ensure that the ERCS COP collateral records **are never transferred out of TS.**



**Caution:** The ERCS COP collateral records are never to be transferred to Examination, PSP, or CCP.

- (2) The ERCS COP collateral records are not used for timekeeping on SETTS. Time spent on COP actions are generally charged as coordinator time (587-011) and is not TIN specific. Refer to IRM Exhibit 4.9.1-1, *Definitions of Miscellaneous Examination Activity Codes*, and IRM 4.7.7, *Examination Returns Control System (ERCS), Technical Services*.

**Note:** If applying direct review time to the specific taxpayer is warranted, it is charged to the full AIMS record (not the collateral record), as 641-011.

- (3) When it is determined that the COP case warrants civil examination actions, and the case is sent forward to Examination or PSP, the ERCS COP collateral record is updated as follows:

- a. If the civil case is already controlled on AIMS (case is in Fraud or Grand Jury Suspense), follow routing instructions in IRM 4.8.11.5.8, to send the case to Field Examination for civil resolution. The collateral record should be updated to Status Code 38 and Suspense Type 595. The action date should be manually set to seven (7) months (210 days) prior to the probation expiration date.

**Note:** This will allow TS to assist Examination in meeting their requirement per IRM 25.1.4.5 (Examination is required to provide a COP Compliance Memo by the earlier of the examination closing, or six (6) months prior to the COP expiration.)

- b. If the civil case not controlled on AIMS (case is not in Fraud or Grand Jury Suspense), follow routing instructions in IRM 4.8.11.5.8 to send case to PSP to be established on AIMS and assigned for examination. The collateral record should be updated to Status Code 38 and Suspense Type 510 to allow us to monitor the case to ensure that it gets established on AIMS. Once the case is assigned to an Examination group and is in Status Code 10 / 12 / 17, the collateral record should be updated to Suspense Type 595 as indicated in paragraph (a) above.

**Caution:** When the COP case also includes criminal restitution to the IRS, refer to IRM 4.8.11.7. Do not send the case forward to PSP to establish AIMS and assign to Examination until the RBA process is completed and the ERCS Restitution collateral record is transferred to your TSC. Refer to IRM 4.8.6.3(3) for exceptions to this rule.

- c. If the case is waiting for the RBA process to be completed before taking further civil action (controlled on AIMS and not controlled on AIMS), the COP collateral record should be in Status Code 38 and Suspense Type 525. This allows ERCS to reflect that the civil case is on hold waiting for the RBA process to be completed. Manual action dates may be entered and updated as determined appropriate. Upon receipt of the ERCS restitution collateral record, update the suspense type as applicable following paragraphs (a) and (b) above.

- (4) When TS receives the *COP Compliance Memo* or “180 Day memo” from the Field Examination group, without the closure of the civil examination case file,

the ERCS COP collateral record will get updated to Suspense Type 526 (365 day suspense). The TS coordinator has no further required actions on monitoring COP until the civil case is closed.

**Note:** If the closing package is initially received with less than 180 days remaining until the probation ending date, the ERCS COP collateral record will get updated to Suspense Type 526 (365 day suspense). The TS coordinator will then take no further COP monitoring actions until the civil case is closed.

- (5) When TS receives the COP case file after all required civil examination actions are completed, the case will be reviewed as describe in IRM 4.8.11.6.2.4. After the case is reviewed and the case is closed from TS (to CCP or Appeals), the ERCS COP collateral record should be updated to Status Code 90 (Closed).

#### 4.8.11.6.2.3.3 (03-29-2017)

##### **COP Case Monitoring Transferred Out of Area**

- (1) When an Examination-related COP case is transferred / assigned to another Examination area, and / or TS territory, additional coordination is needed to ensure effective COP monitoring.
- (2) An examination for the civil resolution after a criminal investigation is generally assigned to the Field Examination area in which the taxpayer resides (permanent residence). The criminal investigation may have been conducted by a CI field office which is outside of the Field Examination area in which the taxpayer resides. When the CI field office closes their investigation via Form 13308, it is sent to the "local" TS TM (or designee / mailbox).
- (3) After the civil examination is assigned to the appropriate Field Examination area, the ERCS COP collateral and "dummy" file will be transferred from the initial receiving TS group / coordinator, to the TS group / coordinator which covers the area where the taxpayer resides and / or services the Examination group working the case.
- (4) The Field Examination group in the Examination area where the taxpayer resides will close the case (which includes AIMS Freeze Code "P") to their "local" TS for mandatory review following normal procedures.
- (5) COP monitoring responsibilities will be completed by the TS group / coordinator which covers the area where the taxpayer resides and / or services the Examination group working the case.
- (6) The TS group / coordinator which covers the area where the taxpayer resides will also complete the procedures under IRM 4.8.11.6 and IRM 4.8.11.8 for the final civil resolution process(es).

**Example:** The CI Seattle field office works a successful criminal investigation and prosecution on Mr. Smith, a resident of Atlanta, GA. The CI Seattle field office sends the Form 13308 to Western TS TM / designee (Seattle TS POD). Seattle TS reviews the CI closing package and establishes the COP collateral record. There is no civil case in suspense in Seattle TS or Atlanta TS. Seattle TS refers the CI closing package to Western Area PSP to establish AIMS controls. Western Area PSP transfers the case (following PSP's procedures), to South Atlantic Area PSP. South Atlantic Area PSP gets the civil examination assigned to a Field Examination group in Atlanta, GA, where the taxpayer resides. PSP (either Western or South Atlantic) notifies TS (either Seattle or Atlanta) where the case

has been assigned. Seattle TS transfers the ERCS COP collateral record and “dummy” file to Atlanta TS. Atlanta Examination field group closes the civil examination with AIMS Freeze Code “P” to Atlanta TS for mandatory review. Atlanta TS completes the COP monitoring review and other case closing actions. This includes sending notifications to CI Seattle Field office and Advisory accordingly.

4.8.11.6.2.3.4  
(03-29-2017)

**Using ERCS Suspense Reports**

- (1) ERCS suspense reports are an effective tool to monitor cases with COP.
- (2) ERCS suspense reports are generated as follows:
  - a. Log in to ERCS and go to the Examination Main Menu screen.
  - b. Select #4 - *Manager's Reports*
  - c. Select #1 - *Inventory Reports*
  - d. Select #7 - *Suspense Report*
  - e. Enter your PBC, SBC, EGC
  - f. Enter ERCS ID of the TS employee to whom the COP collateral records are assigned.
  - g. Enter the suspense type for the specific report you want to generate as follows:
    - Suspense Type 595 - COP cases assigned in Examination where the “COP Compliance Memo” or “180 Day memo” has not been received.
    - Suspense Type 510 - COP cases in PSP waiting to be established and / or assigned.
    - Suspense Type 525 - COP cases on hold pending completion of the RBA process.
    - Suspense Type 526 - COP cases where the “COP Compliance Memo” or “180 Day memo” was received or where one will not be forthcoming.
    - Leave blank for ALL suspense types. This can be helpful if you want to see all types together, but can be harder to use when the assigned employee has multiple programs with various suspense types.
  - h. Enter the number of days in which the action date will expire. When monitoring Examination’s “COP Compliance Memo” or “180 Day memo”, enter 210 days (7 months). You can enter 0 (zero) for the entire inventory. This will give you all action dates (current and expired) for the suspense type entered.
  - i. Enter the sorting option you prefer for the suspense report.
    - Item #1, *Sort by Action Date* is used when you enter a specific suspense type in item g above.
    - Item #4, *Sort by Suspense Type and Action Date* is more helpful when you choose all suspense types in Item g above.

**Note:** The TS Fraud SharePoint website includes instructions on converting an ERCS report into Excel (using Windows 7).

4.8.11.6.2.4  
(03-29-2017)

**Reviewing the Civil Resolution of COP Case**

- (1) The civil resolution of COP cases by Examination require mandatory review by TS. The closed Examination case is assigned to the fraud coordinator in Status Code 20, Suspense Type 504, and Review Type 11 when received from Examination. The fraud coordinator reviews the examination and ensures that Examination completed their requirements. In addition to the normal examination closing requirements (generally under IRM 4.10, *Examination of Returns*), TS reviews the COP case to ensure that Examination has completed the following items. Refer also to IRM 4.8.11.6.1.

- “COP Compliance Memo”, aka “180 Day Memo”, per IRM 25.1.4.5 was sent to CI.
  - If the taxpayer was successfully prosecuted for Title 26 charges (other than only payment of liabilities) a fraud penalty must be asserted, or there must be written concurrence from Area Counsel for the non-assertion of fraud. IRM 25.1.6.2(9).
  - Form 13308, *Section X, Field Examination*, line items i, j, and k, as applicable and sent to CI.
- (2) If these items are not completed and included in the case file, the case may be returned to the Examination group via Form 3990 with instructions for the items required / needed. If the Examination group can provide these items in a reasonable amount of time, the case may be held in TS (Status Code 20). The fraud coordinator and / or TS manager will decide on the best way to proceed.
- (3) After confirming that Examination has adequately completed the COP requirements, as well as the normal case closing requirements, the fraud coordinator will make any other appropriate entries on Form 13308, *Section X, Technical Services*.
- (4) The fraud coordinator will place **copies** of the following items into the COP “dummy” file:
- “COP Compliance Memo”, aka “180 Day Memo”
  - Form 13308 completed by Examination and TS to the extent applicable
  - Area Counsel concurrence for non-assertion of fraud penalties, if applicable
  - Final RAR and waivers or notice of deficiency, as applicable
  - Any other relevant information from the case file.
- (5) If the case also includes criminal restitution refer to IRM 4.8.11.8.3 and IRM 4.8.6.3, *Role and Responsibilities of the Local Technical Services Fraud Coordinator*, and subsections thereafter, before taking the next steps.
- (6) Remove / release the AIMS Freeze Code “P”. Follow current procedures to remove / release the AIMS Freeze Code “P”. This generally includes completion of Form 5348 and submitting it to your “local” TS TE, PSP, or AIMS / ERCS staff to process the form.
- (7) Refer to IRM 4.8.11.8 for the closing actions which apply to **all** civil resolution cases.
- (8) If the COP case is being transferred to Appeals (protest or petition), TS is required to send notification(s) of the transfer. Refer to IRM 4.8.11.6.2.5.

4.8.11.6.2.5  
(03-29-2017)  
**Procedures for  
Transferring COP Cases  
to Appeals**

- (1) TS will follow all existing Appeals / Tax Court procedures when transferring Examination-related COP cases to Appeals (Status Code 81). This applies to unagreed protested cases and petitioned statutory notices of deficiency.
- (2) TS will notify Appeals, CI, and Collection Advisory, via secure e-mail that the COP case is transferred to Appeals.
- a. The e-mail subject line will read: “Conditions of Probation Case sent to Appeals”

- b. The recipients of the e-mail will be as follows:  
 Office of Appeals: Send to the Appeals “Condition of Probation Case Coordinator”. The Appeals COP case coordinator is listed under the “Appeals Contacts” section of the following website: <http://appeals.web.irs.gov/directory/contacts.htm>  
 SB/SE Collection Advisory: “\*SBSE EEF Dallas Restitution” (sbse.eef.dallas.restitution@irs.gov)  
 Criminal Investigation: The CI Field office COP coordinator (per Form 13308 *Section IX*)
- (3) The body of the e-mail will read: “See the attached for a Conditions of Probation Case transferred to Appeals”.
- (4) The following items will be attached to the e-mail:
  - a. Transmittal memo from the TS coordinator to Appeals reflecting the identifying information of the COP case, and contact information for when the case is resolved. See Exhibit 4.8.11-10.
  - b. Copy of completed Form 13308 and Form 14104 (if applicable)
  - c. Optional: Relevant court documents (e.g., Judgment, Plea, Information / Indictment, etc.)
- (5) A copy of the transmittal memo to Appeals will also be attached to the inside left of the case folder (to be the first item on the inside left of the case folder).
- (6) Copies of the transmittal e-mail(s), memo(s), and attachment(s) will be placed into the COP “dummy” file.
- (7) TS’ COP monitoring responsibility will end when the case is transferred to Appeals. TS is not responsible for monitoring the case until assessment and final closure by Appeals. The ERCS COP collateral record may be closed to Status Code 90 when the AIMS record is updated to Status Code 81.
- (8) Upon final resolution of the COP case Appeals will notify TS, Collection Advisory, and CI, via secure e-mail, of the final result.

4.8.11.7  
(03-29-2017)  
**Special Features for  
Civil Resolution Cases  
With Restitution-Based  
Assessments**

- (1) In a criminal tax case, a court can order the defendant to pay restitution to the government. The restitution is based on the losses incurred by the government. The amount of the restitution ordered by the court is calculated from evidence submitted at trial or from information contained in the Plea Agreement and presented to the court at sentencing.
- (2) Public Law No. 111-237 amended IRC 6201 to provide that the Service shall assess and collect the amount of restitution ordered in a tax case for failure to pay any tax imposed under the Internal Revenue Code (IRC) in the same manner as if such amount were such tax. The law applies to restitution orders entered after August 16, 2010.
- (3) The law also amended IRC 6213(b) to stipulate that a notice of assessment of restitution is not a notice of deficiency and may not be petitioned to Tax Court, and added IRC 6501(c) to provide the unlimited assessment period for restitution assessments.

- (4) SB/SE Examination TS has exclusive responsibility for completing assessments on criminal restitution cases where IRC 6201(a)(4) is applicable. A criminal restitution assessment is also referred to as a restitution-based assessment (RBA).
- (5) IRC 6201(a)(4) requires criminal restitution ordered after August 16, 2010, to be assessed as if it were a tax. Whether criminal restitution can be assessed as a tax under IRC 6201(a)(4) depends on whether the restitution ordered is traceable to a tax imposed by Title 26. Restitution ordered for a criminal violation of IRC 7201, IRC 7202, IRC 7203, IRC 7206(1), as well as several other criminal tax violations under the IRC and Title 18 may meet the requirements necessary to be assessed as a tax. The applicability of IRC 6201(a)(4) will be determined by CI with input from CT Counsel and will be reflected on Form 14104.
- (6) Each TS TM, local TS group manager, and local TS fraud coordinator has responsibility to ensure proper adherence to criminal restitution procedures, as summarized below and detailed in IRM 4.8.6.
- (7) TS personnel working cases which involve orders of criminal restitution to the Service should have a detailed understanding of the following:
  - a. IRC 6201(a)(4) provides the legal authority for the Service to assess and collect criminal restitution as if it were a tax.
  - b. IRM 25.26.1 *Criminal Restitution and Restitution-Based Assessments*, provides a general overview and servicewide guidance with respect to court ordered criminal restitution assessments and payments.
  - c. IRM 4.8.6 provides TS' responsibilities for criminal restitution cases.
- (8) The TS SharePoint website and TS fraud subject matter expert (SME) are other helpful resources for additional information regarding criminal restitution and RBA.
- (9) SB/SE Examination TS established a centralized restitution group which has primary responsibility for processing the RBA and the initial submission of the various restitution codes to monitor the RBA and payments. This group has a designated mailbox to handle all inquiries and can be reached at "SBSE TECH Svcs Criminal Restitution" (sbse.tech.svs.criminal.restitution@irs.gov).
- (10) Each TS territory has responsibility to ensure that appropriate civil resolution actions are completed and for updating the various restitution codes accordingly based on the outcome of the civil resolution.
- (11) In addition to SB/SE Examination TS, other Service business operating divisions and / or functions are also involved with meeting the Service's responsibilities for criminal restitution. These includes, but are not limited to, the following:
  - a. Criminal Investigation. See also IRM 25.26.1.3.1, *Criminal Investigation*, and IRM 9, *Criminal Investigation*.
  - b. Wage & Investment, Submission Processing. The "restitution unit" at the Kansas City Campus, also commonly referred to as KC RACS. The unit may be contacted via e-mail at "W&I Criminal Restitution" (wi.criminal.restitution@irs.gov). See also IRM 3.17.243, *Miscellaneous Accounting*, specifically subsection 8, *Department of Justice (DOJ)*, and subsections thereunder.



- c. SB/SE Collection Advisory (and Field Collection). The centralized Collection Advisory group responsible for monitoring criminal restitution is the "Dallas Center for Excellence". The group may be contacted via e-mail at "\*\*SBSE EEF Dallas Restitution" (sbse.eef.dallas.restitution@irs.gov). See also IRM 5.1.5, *Balancing Civil and Criminal Cases*.
- d. SB/SE Compliance Services Collection Operation, also referred to as Campus Compliance Services (CCS), restitution unit at the Ogden Campus. The unit may be contacted via e-mail at "\*\*SBSE Ogden RBA" (sbse.ogden.rba@irs.gov). See also IRM 5.19.23, *Restitution-Based Assessments Processing*.

4.8.11.7.1  
(03-29-2017)  
**Role and Responsibilities of the Local Technical Services Fraud Coordinator - Civil Resolution and Restitution**

- (1) Civil resolution cases which include restitution-based assessments require additional procedures to ensure the assessments and payments are properly identified and monitored by the Service. The guidance for the fraud coordinator's responsibilities for criminal restitution cases is IRM 4.8.6.3 and subsections thereafter.

4.8.11.7.2  
(03-29-2017)  
**AIMS Criminal Restitution Code**

- (1) Effective January 2015, all cases with restitution-based assessments (identifiable by a TC 971 AC 102) which are controlled and open on AIMS (with an open TC 420), will have the "Criminal Restitution Code" of "1" systemically added to the AIMS controls.
- (2) The AIMS Criminal Restitution Code 1 (CR1) prevents the AIMS record from closing (Status Code 90 and TC 421). Similar to the AIMS Freeze Code "P", the CR1 requires the case to be reviewed by TS prior to closure or other transfer out of Examination (Status Code 51 to CCP for examined closures and non-examined survey closures, Status Code 41 to PSP for certain non-examined closures such as record deletion, Status Code 81 to Appeals for petitioned or protested cases).
- (3) All cases with CR1 (and / or AIMS Freeze Code "P") must be transferred by Field Examination to TS in Status Code 21. Form 3198 will be "flagged" by checking the box for *Civil Disposition of Joint Investigation-AIMS Freeze Code P (includes Criminal Restitution)* under the "Forward to Technical Services - Update to Status Code 21" section on the right side of the form.
- (4) Upon receipt of the case with CR1, TS will review the restitution aspects of the case and complete / prepare the procedures covered in IRM 4.8.6.3.3, *Conclusion of Civil Actions / Examination*, and subsections thereafter.
- (5) When the case is ready to be transferred from TS for closure (or to Appeals), the CR code must be updated from "1" to "2". The procedures for updating the CR code are as follows:
  - a. Prepare Form 5348 and enter "2" in the line / box for "Criminal Restitution Code".
  - b. Send the completed Form 5348 via secure e-mail to the designated AIMS / ERCS Analyst for the TS area. The contacts for AIMS / ERCS Personnel Listing by Area may be found at <http://mysbse.web.irs.gov/examination/mis/contacts/staff/default.aspx>.
  - c. The subject line of the secure e-mail should read: "Form 5348 Input for CR Code 2".

- d. The TS AIMS / ERCS analyst will respond via secure e-mail when the code has been updated.

4.8.11.8  
(03-29-2017)

**Technical Services’  
Closing Actions on All  
Civil Resolution Cases**

- (1) Certain examination cases worked for civil resolution after the criminal investigation require mandatory review by TS prior to “closure” by Examination. This requirement is in place to ensure that examiners complete all required procedures for cases with “special features”. The civil resolution cases with “special features” which require mandatory review by TS are as follows:
  - a. Successfully prosecuted cases which include Title 26 charges as part of the conviction or plea. TS is responsible for confirming that Examination asserted fraud penalties (IRC 6663 and / or IRC 6651(f)) on the conviction / plea years / returns, or secured written concurrence from Area Counsel for non-assertion or removal of the fraud penalties. See IRM 25.1.6.2(9) and IRM 4.8.11.8.1.
  - b. Successfully prosecuted cases (under any Title) where the court orders special conditions of probation / supervision which relate to tax. Examination and TS share responsibility specifically for following up on cases where the COP includes assessment-related or Examination-related conditions. See IRM 25.1.4.5 and IRM 4.8.11.6.
  - c. Successfully prosecuted cases (under any Title) where the court orders criminal restitution payable to the IRS **and** the criminal restitution is assessable under IRC 6201(a)(4). TS has responsibility to ensure proper assessments of criminal restitution under IRC 6201(a)(4) as determined by CI, and to ensure that the other “normal” civil assessments made by Examination (also under IRC 6201) are posted properly following the special procedures for identifying any duplicate assessments. See IRM 25.26.1, IRM 4.8.6, and IRM 4.8.11.7.
- (2) To ensure that these mandatory review cases are reviewed by TS prior to “closure” by Examination, there are “freeze codes” and / or “indicators” added to AIMS which prevent closure of the AIMS controls unless these codes are removed and / or updated.
  - a. AIMS Freeze Code “P” is added to cases which fit scenarios under (1)(a) and (1)(b) above. The AIMS Freeze Code “P” may also apply to cases under scenario (1)(c) above, when applicable. See also IRM 4.4.12.7, *AIMS Freeze Codes*, and IRM 4.8.11.5.8.1.
  - b. AIMS Criminal Restitution Code “1” (CR1) is added to cases under scenario (1)(c) above. CR1 may also apply to cases under scenarios (1)(a) and (1)(b) above, when applicable. See also IRM 4.4.12.8, *AIMS Indicators that Prevent a Closure*, and IRM 4.8.11.7.2.
- (3) The civil resolution cases identified in paragraphs (1) and (2) above should be assigned to the fraud coordinator to complete the “fraud procedures” described in the following subsections.
- (4) Other examination cases worked for civil resolution after a criminal investigation do not require AIMS Freeze Code “P” or CR1, and do **not** require mandatory review by TS (unless there are other “special features” which require mandatory review by TS, such as Innocent Spouse or Bankruptcy). These include, but are not necessarily limited to, the following:
  - Criminal investigation discontinued by CI
  - Criminal investigation where prosecution is declined by DOJ

- Criminal investigation not successfully prosecuted (e.g., adjudicated not guilty)
- Criminal investigation successfully prosecuted for tax-related charges, but not under Title 26 (e.g., 18 USC 371 Conspiracy to Commit Offense or to Defraud the United States) where there is no tax or tax-related COP or criminal restitution to the Service under IRC 6201(a)(4).

- (5) If any of the civil resolution cases identified in paragraph (4), above, are received in TS the fraud coordinator should be consulted to confirm that no “fraud procedures” are required. These cases generally are not required to be assigned to a fraud coordinator. These cases should be reviewed following the “normal” TS technical and quality review procedures, as applicable.

4.8.11.8.1  
(03-29-2017)

**Closing Actions for the Civil Resolution of Successfully Prosecuted Tax Cases (Title 26)**

- (1) When a successfully prosecuted tax (Title 26) case is closed by Examination and sent to TS for mandatory review and removal of the AIMS Freeze Code “P” the following steps should be completed by the fraud coordinator:
- a. Ensure the case is assigned properly using the following ERCS codes:
    - Status Code 20, *Mandatory Review*
    - Review Type 45, *Administrative Fraud*; 46, *Grand Jury*; 11, *COP*, as appropriate
    - Suspense Type 504, *30 Days*
  - b. Time will be charged on SETTS to Activity Code 641, *Direct Review Time*, using the taxpayer’s TIN.
  - c. Review the relevant court documents, such as the Information / Indictment, Plea Agreement, and Judgment, to verify all the charges against the defendant and the charges which were successfully prosecuted in the final Judgment. Specifically the Title 26 tax charges. If the relevant court documents were not included in the case file, and you do not already have copies from when CI sent the “closing package” to TS, request them from the examiner or special agent, or access PACER to retrieve them.
  - d. Review the case file to determine if the examiner properly considered the tax implications of all charges filed. Review the fraud determinations made by the examiner and manager, as needed. The case file should be adequately documented to support the conclusions reached on the examination issues and the penalties asserted. If the case file does not adequately document and support the determinations made, judgment should be exercised to determine if the case should be returned to the examiner on Form 3990. Generally, agreed cases will be only reviewed for proper penalty determinations as described in the following paragraph.
  - e. If it is determined that a fraud penalty is not asserted on the years / returns where the Title 26 prosecution involved additional tax assessment(s), confirm that the case file includes written concurrence by Area Counsel for the determination to not assert a fraud penalty. This rule also applies in the case of any related taxpayer involved in the same transaction and to any other year or period of the same taxpayer which is related to or affects the year or period for which criminal prosecution was successful. See IRM 25.1.6.2(9).
    - If a fraud penalty is not asserted, and the file does not include written concurrence by Area Counsel, then the case should be returned to Examination on Form 3990 to secure concurrence from Area Counsel.
    - If the file does include written concurrence from Area Counsel, proceed accordingly.

- f. If the case also includes tax-related COP follow the procedures under IRM 4.8.11.8.2.
- g. If the case also includes restitution assessable under IRC 6201(a)(4) follow the procedures under IRM 4.8.6.3 and IRM 4.8.11.8.3.
- h. When determined that the above fraud-related aspects are adequately considered, documented, and supported, the AIMS Freeze Code "P" should be removed / released and or CR2 entered.
- i. Once all of the above fraud-related aspects of the case review have been completed, the case should be reviewed, as appropriate, to ensure Examination's compliance with all other applicable IRM requirements. This "normal" case review may be completed by any qualified RA reviewer. If the case file does not meet IRM requirements and / or contains errors which require correction, judgment should be used to determine if the case should be returned to Examination on Form 3990 or corrected by TS. Otherwise, proceed with the applicable closing procedures depending on the type of closure by Examination. Common types of closures by Examination include, but are not limited to:
  - No-change and / or no-change with adjustments
  - Agreed
  - Unagreed with protest to Appeals
  - Unagreed for issuance of statutory notice of deficiency
  - Non-examined closure (survey, record deletion).

4.8.11.8.2  
(03-29-2017)

**Closing Actions for the  
Civil Resolution of COP  
Cases**

- (1) When a successfully prosecuted case (under any Title) which has **tax or tax-related** conditions of probation / supervision is closed by Examination and sent to Technical Services for mandatory review and removal of the AIMS Freeze Code "P" the following steps should be completed by the fraud coordinator.
  - a. Ensure the case is assigned properly using the following ERCS codes:
    - Status Code 20, *Mandatory Review*
    - Review Type 45, *Administrative Fraud*; 46, *Grand Jury*; or 11, *COP*, as appropriate
    - Suspense Type 504, *30 Days*
  - b. Time will be charged on SETTS to Activity Code 641, *Direct Review Time*, using the taxpayer's TIN.
  - c. Review the relevant court documents, such as the Information / Indictment, Plea, and Judgment, to verify all the charges against the defendant and the charges which were successfully prosecuted in the final Judgment. If the relevant court documents were not included in the case file, and you do not already have copies from when CI sent the closing package to TS, request them from the examiner or special agent, or access PACER and download them.
  - d. Review the case file to determine if the examiner properly considered the tax implications of all charges filed. Review the fraud determinations made by the examiner, manager, and FTA, as applicable. The case file should be adequately documented to support the conclusions reached on the examination issue and the penalties asserted. If the case file does not adequately document and support the determinations made, judgment should be used to determine if the case should be returned to the examiner on Form 3990.
  - e. Follow the procedures in IRM 4.8.11.6.2.4.
  - f. If the case also includes a successfully prosecuted Title 26 charge, follow the procedures under IRM 4.8.11.8.1.

- g. If the case also includes restitution assessable under IRC 6201(a)(4), follow the procedures under IRM 4.8.11.8.3 and IRM 4.8.6.3.
- h. When determined that the fraud aspects are adequately considered, documented, and supported, the AIMS Freeze Code "P" should be removed / released and CR2 input, if applicable.
- i. Notification of the civil closure, with a brief overview of the results and any other relevant facts as determined by the fraud coordinator, will be sent via secure e-mail to the following:
  - SBSE Collection Advisory: "\*\*SBSE EEF Dallas Restitution" (sbse.eef.dallas.restitution@irs.gov)
  - Criminal Investigation: The CI field office COP coordinator (per Form 13308, *section IX*)
- j. Once all of the above fraud-related aspects of the case review have been completed, the case should be reviewed, as appropriate, to ensure Examination's compliance with all other applicable IRM requirements. This "normal" case review may be completed by any qualified RA reviewer. If the case file does not meet IRM requirements and / or contains errors which require correction, judgment should be used to determine if the case should be returned to Examination on Form 3990 or corrected by TS. Otherwise, proceed with the closing procedures depending on the type of closure by Examination. Common types of closures by Examination include, but are not limited to the following:
  - No-change and / or no-change with adjustments
  - Agreed
  - Unagreed with protest to Appeals
  - Unagreed for issuance of statutory notice of deficiency
  - Non-examined closure (survey, record deletion)

4.8.11.8.3  
(03-29-2017)

**Closing Actions for the  
Civil Resolution of  
Criminal Restitution  
Cases**

- (1) When a successfully prosecuted case (under any Title) which has restitution assessable under IRC 6201(a)(4) is closed by Examination and sent to TS for mandatory review and update of the AIMS Criminal Restitution Code "1", the following steps should be completed by the fraud coordinator.
  - a. Ensure the case is assigned properly using the following ERCS codes:
    - Status Code 20, *Mandatory Review*
    - Review Type 45, *Administrative Fraud*; 46, *Grand Jury*; or 11, *COP*, as appropriate
    - Suspense Type 504, *30 Days*
  - b. Time will be charged on SETTS to Activity Code 641 using the taxpayer's TIN.
  - c. Review the relevant court documents, such as the Information / Indictment, Plea, and Judgment to verify all the charges against the defendant and the charges which were successfully prosecuted in the final Judgment. If the relevant court documents were not included in the case file, and you do not already have copies from when CI sent the "closing package" to TS, request them from the examiner or special agent, or access PACER and download them.
  - d. Review the case file to determine if the examiner properly considered the tax implications of all charges filed. Review the fraud determinations made by the examiner, manager, and FTA, as applicable. The case file should be adequately documented to support the conclusions reached on the examination issues and the penalties asserted. If the case file does not



adequately document and support the determinations made, judgment should be used to determine if the case should be returned to the examiner on Form 3990.

- e. Follow the procedures under IRM 4.8.6.3.3 and subsections thereafter.

**Note:** The RBA cases must be monitored until the civil assessment(s) and the TC 971 AC 18X codes are posted, if applicable.

- f. If the case also includes a successfully prosecuted Title 26 charge, follow the procedures under IRM 4.8.11.8.1.
- g. If the case also includes other tax-related COP, follow the procedures under IRM 4.8.11.8.2.
- h. Confirm the RAR (Form 4549 or equivalent) contains no references to restitution on the report or attachments.
- i. When determined that the restitution aspects are completed, the AIMS CR Code "1" should be updated to "2". Follow the procedures under IRM 4.8.11.7.2 to update the AIMS CR code.
- j. Once all of the above fraud-related aspects of the case review have been completed, the case should be reviewed, as appropriate, to ensure Examination's compliance with all other applicable IRM requirements. This "normal" case review may be completed by any qualified RA reviewer. If the case file does not meet IRM requirements and / or contains errors which require correction, judgment should be used to determine if the case should be returned to Examination on Form 3990 or corrected by TS. Otherwise, proceed with the closing procedures depending on the type of closure by Examination. Common types of closure by Examination include, but are not limited to the following:
- No-change and / or no-change with adjustments
  - Agreed
  - Unagreed with protest to Appeals
  - Unagreed for issuance of Statutory Notice of Deficiency
  - Non-examined closure (survey, record deletion)

4.8.11.9  
(03-29-2017)  
**Fraud Penalty Issues**

- (1) TS is not responsible for developing the adjustments and penalties of a civil resolution case. The penalty determination(s) and development is the responsibility of the examiner and manager, in conjunction with the FTA. However, the TS fraud coordinator does play an important role to help ensure the case file was developed sufficiently to support the assertions made by Examination. This subsection provides general information to assist with reviewing the civil fraud issues in the case.
- IRM 25.1, provides information for IRS policy and procedures on fraud cases.
  - IRM 20.1.5.14, *IRC 6663 Civil Fraud Penalty*, provides more information for computing and asserting the IRC 6663 civil fraud penalty.
  - IRM 20.1.2.2.7.5, *Fraudulent Failure to File - IRC 6651(f)*, provides more information for computing and asserting the IRC 6651(f) fraudulent failure to file penalty.

4.8.11.9.1  
(03-29-2017)  
**May the Fraud Penalty Be Removed?**

- (1) IRM 25.1.6.2(9) states: "The civil fraud penalty and / or the fraudulent failure to file penalty must be asserted if a taxpayer was successfully prosecuted by the DOJ under Title 26 (i.e. IRC 7201, IRC 7203, IRC 7206(1)) and the prosecution involved additional tax assessment(s) as opposed to payment of existing assessment(s). Any exceptions to this rule must be approved by Area Counsel. In unsuccessful prosecution cases, non-assertion of the civil fraud penalty and



/ or the fraudulent failure to file penalty is the discretion of the Examination group manager. Examination group managers are encouraged to consult with their local FTA for assistance. This rule also applies in the case of any related taxpayer involved in the same transaction and to any other year or period of the same taxpayer which is related to or affects the year or period for which criminal prosecution was successful.”

- (2) The examiner must be advised to consider this provision when making their determination of civil fraud.

## 4.8.11.9.2 (03-29-2017) **Documentation to Develop the Fraud Penalty**

- (1) IRM 25.1.6.2, *Fraud Handbook, Civil Fraud, Procedures*, provides that upon civil resolution of a prosecution case, the examiner should contact CI to ascertain which criminal statutes the taxpayer was convicted of before attempting to resolve the related civil fraud penalty. CI must generally provide this information to TS along with the Form 13308 as part of the “closing package”. The following documents will help the examiner support the civil fraud penalty:
  - a. Indictment, information, complaint and / or other court action
  - b. Special agent report (SAR) (administrative fraud and pre-grand jury only)
  - c. Plea, if applicable
  - d. Judgment
  - e. Other relevant court documents related to the prosecution trial, such as docket summary, sentencing memorandums, etc.
  - f. Applicable witness files to support the penalty and adjustments, other than any Rule 6(e) information from grand jury proceedings
  - g. Other relevant non-Rule 6(e) grand jury supporting documents to support the penalty and adjustments
  - h. Original returns if in CI's possession
- (2) If any applicable documents are not received from CI, the fraud coordinator should ask CI to provide them. IRM 9.5.14.15 reflects the documents that CI is required to provide. If they are unable to provide the additional documents, the documents may be available through PACER.
- (3) The fraud coordinator should instruct the examiner that these documents are very important to aid in developing, documenting, and supporting the assertion of the fraud penalty. When a taxpayer is prosecuted or pleads guilty, it is very important to determine if the prosecution included tax charges or violations specifically under IRC 7201 or IRC 7206. It is also important to identify the specific tax years for which the taxpayer was prosecuted, and convicted or pled guilty.
- (4) Collateral estoppel means that the taxpayer may not contest the element of fraud within the civil fraud penalty but may dispute the amount of the underpayment upon which such penalty is based. Refer to IRM 4.8.11.9.3.4 below, for further discussion on collateral estoppel. These facts are very important in determining the effort needed and documentation required in sustaining the assertion of the civil fraud penalty and the years to which the penalty is applicable.

## 4.8.11.9.3 (03-29-2017) **Fraud and Fraudulent Failure to File Penalty**

- (1) The following discusses the burden of proof and collateral estoppel, as well as other miscellaneous items, as they relate to the fraud penalty and the fraudulent failure to file penalty.

4.8.11.9.3.1  
(03-29-2017)

#### **Burden of Proof**

- (1) In tax fraud cases, the burden of proof is on the government. IRM 25.1.1.2.2, *Requirements of Proof*, lists the requirements of the government's burden of proof.
- (2) Burden of proof is the obligation to offer evidence that the court or jury could reasonably believe in support of a contention.
  - a. In criminal fraud cases, the government must present sufficient evidence to prove guilt beyond a reasonable doubt.
  - b. In civil fraud cases, the government must prove fraud by clear and convincing evidence (highly probable or reasonably certain). This is a greater burden of proof than preponderance of the evidence, but less than beyond a reasonable doubt. This is a higher degree of proof than is required for many issues of a technical nature. The evidence must show the taxpayer's intent to defraud the Government and / or evade the tax which the taxpayer believed to owe. The government must document firm indications of fraud exist from well-developed facts.
- (3) It is the examiner's responsibility to adequately develop and support all determinations. The fraud coordinator must review the case file to ascertain whether the imposition of the fraud penalty is supported by evidence in the file. Any necessary evidence (non-grand jury) from the criminal file should be included in the civil file.
- (4) The FFTP penalty under IRC 6651(f) must be supported by evidence in the file. The mere fact the taxpayer failed to file a return does not constitute sufficient evidence to sustain the fraudulent failure to file penalty. Overt acts of fraud and / or evasion must be identified and supported by the evidence included in the case file.
- (5) IRM 25.1.7, provides more information for supporting the assertion of the IRC 6651(f).

4.8.11.9.3.2  
(03-29-2017)

#### **IRM 25.1.1.2.1 - Definitions - General**

- (1) Compliance employees must be familiar with the following legal terms in order to understand the requirements of proof. Refer to IRM 25.1.1.2.1, *Definitions, General*, for important terms and definitions.

4.8.11.9.3.3  
(03-29-2017)

#### **Access to Direct Evidence**

- (1) Tax crimes are often acts of individual greed and, therefore, very little "direct evidence" is usually available. Depending on the facts and circumstances of each investigation, the subject's correct taxable income may be established by "direct" or several "indirect" methods of proof, usually using circumstantial or "indirect" evidence. See also IRM 9.5.9, *Methods of Proof* for more information on establishing proof using different types of evidence.

4.8.11.9.3.4  
(03-29-2017)

#### **Collateral Estoppel**

- (1) TS fraud coordinators should be aware of collateral estoppel and the important distinction it can have in civil fraud penalty cases. See the discussion below and IRM 25.1.6.4, for more in-depth information.
- (2) Collateral estoppel is a legal doctrine that prevents a taxpayer, who has been previously convicted of criminal tax evasion under IRC 7201, from asserting a defense to the civil fraud penalty. Collateral estoppel, like the related doctrine of res judicata, has the dual purpose of protecting litigants from the burden of re-litigating an identical issue with the same party or his privy and of promoting judicial economy by preventing needless litigation. Parklane Hosiery Co. v.

Shore, 439 U.S. 322, 326 (1979). The courts routinely look to the presence of several factors in applying collateral estoppel. The issue for which estoppel is being sought must have been necessary in reaching the original decision (see Parklane case cited above), the party to be estopped had a full and fair opportunity to litigate the issue in the original suit - (Montana v. United States, 440 U.S. 147, 154 (1979)), and the issue must have been part of a valid and final Judgment. (Ashe v. Swenson, 397 U.S. 436, 443 (1970)). The doctrine of collateral estoppel applies only to the years for which the taxpayer has been convicted (or pled guilty). Intent must be established for non-conviction / non-plea years.

- (3) Collateral estoppel is an affirmative defense. Because the examiner bears the burden of proof with respect to fraud, the facts and evidence supporting the assertion of the fraud penalty must also be thoroughly developed. Thus, for cases involving both conviction and non-conviction years, it is essential to adequately develop all facts supporting the fraud penalty for the non-conviction years. Even though collateral estoppel applies to the conviction year(s) or the year(s) covered by the plea, the proper development and discussion of the factual evidence of fraud in the year or years covered by estoppel is essential for the purpose of establishing a pattern of relevant conduct consistent with the arguments for the assertion of the IRC 6663 penalty for the years not covered by collateral estoppel. Thus, in this case, it is necessary to show a pattern of tax omission and the facts evidencing fraud should be thoroughly developed for all years. The examiner assigned to the case should refer to IRM Exhibit 35.11.1-17, *Answer—Collateral Estoppel—General*, IRM Exhibit 35.11.1-22, *Answer—Affirmative Allegations: Fraud—Collateral Estoppel As To Tax Year*, and Williams v. Commissioner, T.C. Memo. 1991-521.
- (4) If a non-filer is prosecuted and convicted under IRC 7203, he is collaterally estopped from denying liability under IRC 6651(a), the delinquency penalty. Booher v. Commissioner, T.C. Memo. 1986-475. He is not collaterally estopped from denying liability under the civil fraud penalty per IRC 6663 or the fraudulent failure to file penalty per IRC 6651(f).

4.8.11.9.3.5  
(03-29-2017)  
**Documentation of  
Culpable Spouse**

- (1) The examiner should be instructed that the workpapers need to adequately establish and document whether or not the fraud penalty is to be applied against both spouses for a joint return.
- (2) If the penalty is only applicable to one spouse, be sure the workpapers specify the identity of the culpable spouse. IRC 6663(c) provides that, in the case of a joint return, the civil fraud penalty shall not apply with respect to a spouse unless some part of the underpayment is due to the fraud of such spouse. When asserting the civil fraud penalty, the Service must show by clear and convincing evidence that at least some part of the underpayment for the taxable year is due to the fraud of the culpable spouse(s). The Service can do this by developing evidence of fraud, also called “badges of fraud” or “indicators of fraud”, to support the penalty against the spouse(s). For example, in the civil resolution of a criminal case the non-target (non-prosecuted spouse) may have helped the target (prosecuted) spouse conceal assets or may have received a large cash payment in a bank account and failed to inform the couple’s tax return preparer of the deposit. The non-target spouse’s knowledge of the target’s fraudulent conduct is one example of a badge of fraud that can be used to support the civil fraud penalty against the non-target spouse. See IRM 20.1.5.14 and subsections thereafter.

- (3) Non-assertion of the civil fraud penalty against a non-target spouse does not affect the statute of limitations as to the non-target spouse since fraud on the part of the target spouse keeps the statute open as to both spouses on a joint return. Fraud on any part of the return by either spouse provides for the fraud exception to the statute of limitations under IRC 6501(c)(1).
- (4) The IRC 6663(c) determination is entirely separate from the innocent spouse issue under IRC 6015 where one spouse might be relieved of joint and several liability for all or part of the deficiency and / or penalties if the applicable requirements of IRC 6015 (b), (c), or (f) are met. Innocent spouse claims are common in fraud cases. A Form 8857 must be filed before any IRC 6015 innocent spouse relief can be considered by the Service.

4.8.11.9.3.6  
(03-29-2017)

#### **Fraud Imposed on Both Spouses**

- (1) If the fraud penalty is being imposed against each spouse, the case must be evaluated to determine whether there is sufficient evidence to meet the government's burden of proof with respect to the fraud penalty, against each spouse. If the fraud penalty is well developed against one spouse, but not the other, and the report does not indicate that the penalty is to apply only against one, contact the examiner who conducted the civil examination to determine whether the penalty was meant to be applied against one or both.
- (2) IRC 6663(c) provides that, "In the case of a joint return, this section shall not apply with respect to a spouse unless some part of the underpayment is due to the fraud of such spouse."
- (3) This means that fraud must be established separately against each spouse, when a joint return is filed, or asserted only against the spouse for which fraud is established. In the case of a joint return there should be a separate fraud write up for each spouse and clear and convincing evidence of fraud on the part of each spouse. If the acts of only one spouse are found to be fraudulent, separate reports and / or notices will be issued to the two spouses. The notice of the culpable spouse will include the fraud penalty. The notice to the non-culpable spouse will not include the fraud penalty. See JIRM 4.8.9.16.6.1, *Procedures - Culpable Spouse*, and IRM 4.8.9.16.6.2, *Procedures - Non-culpable Spouse*.

4.8.11.9.3.7  
(03-29-2017)

#### **Fraudulent Failure to File Penalty**

- (1) While the fraudulent failure to file penalty under IRC 6651(f) mirrors, in many ways, the civil fraud penalty under IRC 6663, the administration and assessment of the two penalties is different.
- (2) IRC 6665(a) provides that many additions to tax are treated as tax and that they are assessed in the same manner as taxes. IRC 6665(b), however, provides that the portion of the penalty under IRC 6651 which is not attributable to a deficiency, that is, the portion attributable to tax shown due on a return which was filed late, is not assessed in accordance with deficiency proceedings. Therefore, no notice of deficiency is issued and no opportunity to petition tax court prior to assessment is afforded for the assessment of the delinquency penalty(ies) on the amount of tax shown on the return.
- (3) If IRC 6651(f) penalty is attributable to the tax shown on a return, the Service should assess the penalty immediately, in the same manner as the IRC 6651(a) delinquency penalty since the penalty is not subject to deficiency procedures. Area Counsel concurrence is required when asserting / assessing the IRC 6651(f) penalty. The examiner should solicit Area Counsel advice even if IRC 7201 is applicable. The taxpayer should be provided an opportunity to

agree or disagree and provided his or her appeal rights. The examiner (and fraud coordinator while controlled in TS) must monitor the statute for assessment purposes. If the penalty is not assessed within the IRC 6501(a) statute period (including valid consents to extend), the assessment of the penalty is barred.

**Caution:** Before proposing assessment of the fraudulent failure to file penalty the criminal implications must be considered. If determined it will be referred, or if already controlled by CI, then the issue must be discussed with CI. Refer also to IRM 4.8.11.3.4(4) (h)(Caution), and IRM 25.1.7.6, *Secured Delinquent Return (DEL RET)*.

- (4) If the late filed return is incorrect and additional assessment is warranted, the IRC 6651(f) penalty attributable to the tax shown on the return as filed, is assessed immediately, while the portion of the IRC 6651(f) penalty attributable to a deficiency determined would be subject to deficiency procedures and included on the statutory notice of deficiency.
- (5) Refer also to IRM 25.1.7, and IRM 20.1.2.2.7.5 and subsections thereafter for more information about the penalty.

4.8.11.9.3.8  
(03-29-2017)  
**Coordination With Other Penalties**

- (1) The accuracy-related penalties under IRC 6662 cannot be asserted on the same portion of the underpayment on which the fraud penalty under IRC 6663 is asserted. If, however, a portion of an underpayment is due to fraud, the fraud penalty may apply to that portion of the underpayment, and the accuracy-related penalty to part or all of the balance of the underpayment. However, if Counsel does not concur with the fraud penalty, then the assessments and accuracy-related penalty would only apply if the three year statute is still open (including executed statute extensions).
- (2) Although the fraud penalty under IRC 6663 applies only to a return filed by the taxpayer, if a return is filed delinquent, and there is an underpayment relating to that delinquent return, the fraud penalty under IRC 6663 may apply, along with the failure to file penalty under IRC 6651(a)(1).
- (3) If adjustments are made to a return which was filed late, due to fraud, there is nothing prohibiting the imposition of the fraud penalty under IRC 6663 along with the fraudulent failure to file penalty under IRC 6651(f). Typically IRC 6651(f) based upon the tax reflected on the fraudulent delinquent return and IRC 6663 based upon the deficiency. Although there is no specific prohibition against asserting penalties under both IRC 6651(f) and IRC 6663, caution should be used when considering this action. The court is not likely to sustain the assertion of both penalties unless compelling facts support the Service's position. Concurrence from Area Counsel is required before asserting both of these penalties on the same return.
- (4) The estimated tax penalty under IRC 6654 may be asserted in conjunction with the fraudulent failure to file penalty under IRC 6651(f). The estimated tax penalty is based upon the tax reflected on the fraudulent delinquent return but not any additional adjustments.

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## Exhibit 4.8.11-1 (03-29-2017)

### Reviewing Incoming Cases Submitted for Suspense - Statute Protection Job Aid

#### Taxpayer Information:

- Name
- TIN:
- Tax Year(s):

The fraud coordinator has responsibility for all civil statutes in Fraud / Grand Jury Suspense, so it is mandatory that the file be reviewed immediately upon receipt in Technical Services. See IRM 4.8.11.3.5.1(1).

**Note:** These procedures generally do not apply to non-taxable non-TEFRA flow-through returns. Statutes for these flow-thru returns are controlled at the investor level. Ensure the return is a non-taxable non-TEFRA return. Refer to IRM 4.8.11.3.5.3(5) for more guidance on statutes for these flow-through returns.

This procedural check sheet should be used in conjunction with the Fraud and Grand Jury Suspense Control Sheet ( Exhibit 4.8.11-2). All statute information for all years controlled should be recorded on the control sheet. The Suspense Control sheet is also available on the TS Fraud SharePoint site.

	Yes	No	N/A	Remarks/References
Does the case meet all the requirements to be placed into suspense? IRM 4.8.11.3.4				<b>Circle One:</b> Administrative / Grand Jury
Does the case file include the Notice of Department of Justice Referral from CI, listing the specific returns included in the package submitted for suspense?				
Is the case under the jurisdiction of the Department of Justice (DOJ) or determined by CI that further civil actions may directly impact the outcome of the case under DOJ / AUSA jurisdiction? Was Policy Statement 4-26 discussed and documented?				
Has the administrative investigation case been referred for prosecution to DOJ?				
Has DOJ approved initiation of a Grand Jury investigation or CI has determined to be directly connected to a DOJ approved Grand Jury investigation and as such, no further civil actions should be taken?				
What charges are being recommended or investigated? (e.g., Title 26 U.S.C. 7201, Evasion for the YYYY tax year) If case is Grand Jury, we may not know what the charges are until the criminal case is completed. If non-tax charges, discuss with TS supervisor.				<b>Tax / Tax Related Charges:</b>

**Exhibit 4.8.11-1 (Cont. 1) (03-29-2017)****Reviewing Incoming Cases Submitted for Suspense - Statute Protection Job Aid**

	Yes	No	N/A	Remarks/References
What years have been referred or are being investigated?				<b>Returns referred to DOJ:</b> <b>Related returns under investigation but not referred to DOJ:</b>
Administrative Case: IRM 25.1.4 - Verify the special agent report (SAR) is in the case file; the pre-prosecution report is completed (IRM 25.1.4.3.10); and AIMS controls for all appropriate years (IRM 25.1.4.3.5). See also Step 12 below.				
Grand Jury (GJ) Case: IRM 25.1.5 - SAR may not be completed. If it is complete and GJ information was not used to compile the report, secure a copy of the SAR. Case may / may not have developed issues. If issues are complete, verify accuracy of RAR. AIMS controls should not be initiated after notification of GJ involvement. IRM 25.1.5.2(5). See also Step 12 below.				
Verify source documents are in case file to support adjustments. (GJ case file does <b>not</b> contain any documents based upon GJ material. Only include documents prepared / secured prior to the initiation of GJ.)				<b>Notate date accepted into suspense:</b>
Review case for completeness (to extent applicable). Refer to Step 9 - Penalty Considerations.				Notate date case rejected:
If case meets the suspense criteria, complete Suspense Control Sheet information with this job aid. If it does not meet the suspense criteria, follow the steps below to complete the case review and complete Form 3990 to return case to the group.				
<b>Step 1: Is the return a substitute for return (SFR)?</b> ("EE" statute) Did Examination adequately address statutes for frivolous and invalid returns? See IRM 25.25.10.6.8. <b>If yes</b> , skip to Step 9. <b>If no</b> , continue to Step 2.				

## Exhibit 4.8.11-1 (Cont. 2) (03-29-2017)

### Reviewing Incoming Cases Submitted for Suspense - Statute Protection Job Aid

	Yes	No	N/A	Remarks/References
<b>Step 2: Is the normal IRC 6501(a) three-year statute still open? If yes</b> , continue to Step 3. NOTE: If the incoming case involves a TEFRA case, additional statute considerations apply. Refer to IRM 25.6.22.6.5.1. Contact a TEFRA reviewer if assistance is needed. <b>If no</b> , skip to Step 4.				
<b>Step 3: Is there a minimum of one year remaining on the IRC 6501(a) - three-year statute as required?</b> IRM 4.8.11.3.5.1(2), IRM 25.1.4.3.11(1)(b), IRM 25.1.5.2(6) <b>If yes</b> , skip to Step 9. <b>If no</b> , continue to Step 4.				
<b>Step 4: Has Form 10498-B (or equivalent) been executed by Examination TM, allowing the IRC 6501(a), three-year statute to expire due to reliance on another code section?</b> (e.g., IRC 6501(e)(1)(A)(i), 25% omission, IRC 6501(e)(1)(A)(ii), IRC 6501(c)(8), Foreign Transfers and / or IRC 6501(c), fraud). Refer to IRM 25.1.4.3.8, IRM 4.8.11.3.5.1(2) and IRM 4.8.11.3.5.2 for Form 10498-B procedures. <i>(If CI did not recommend the solicitation of a Form 872 and/or the issuance of a statutory notice of deficiency (SNOD), a written explanation supporting their recommendation(s) must be attached to Form 10498-B in the case file.)</i>				Note the date Form 10498-B was secured/executed on the control sheet.

**Exhibit 4.8.11-1 (Cont. 3) (03-29-2017)****Reviewing Incoming Cases Submitted for Suspense - Statute Protection Job Aid**

	Yes	No	N/A	Remarks/References
<p><b>If yes, verify</b></p> <ul style="list-style-type: none"> <li>Form 10498-B has been signed by GM, SSA, SAC and TM (prior to the expiration of the statute) and is attached to the return. Notate the Form 895 if not already completed.</li> <li>If permission was granted to solicit an extension, verify the consent was sent. If the consent was signed and executed by the proper party, the statute should be updated accordingly and Form 872 should be attached to the first page of the tax return. Verify Form 895 reflects the extended statute. See IRM 25.6.22 for statute extension procedures.</li> <li>If not signed, verify follow up Letter 928 was sent by Examination to all applicable parties.</li> </ul> <p>Ensure ASED is correct on Masterfile, AIMS, and ERCS, Form 895 is correct, and notate correct ASED on Suspense Control Sheet. Continue to Step 5.</p>				

## Exhibit 4.8.11-1 (Cont. 4) (03-29-2017)

### Reviewing Incoming Cases Submitted for Suspense - Statute Protection Job Aid

	Yes	No	N/A	Remarks/References
<p><b>If no, and</b></p> <ul style="list-style-type: none"> <li>The three year statute is still open, return the case to the group to follow the Form 10498-B procedures. (Complete step 5 for IRC 6501 (e) consideration and step 9 for penalty considerations before returning case to group.) Note: A review of the case file for any significant deficiencies including but not limited to lack of development of issues(s) and lack of proper documentation should be completed before returning the case to the group.</li> <li>The three year statute has expired; verify if the case was established on AIMS / ERCS before the three year statute expired. (See step 5 to determine if any other provision applies to open the statute of limitations.) If no other provision applies, notify Technical Services manager (TSS) that the statute was not properly protected and prepare Preliminary Form 3999 Statute Expiration Report. IRM 25.6.1.13.2.8.1(5). See also Exhibit 4.8.11-6, also available on the TS Fraud SharePoint site.</li> </ul> <p><b>Note:</b> If the return was established after the three year statute expired, Form 10498-B and Form 3999 are <b>not</b> required. This year should have a "CC" statute. See IRM 4.8.11.3.5.3(3)(e). Verify no other exception provision applies to keep the ASED open. Notate Form 895 and Suspense Control Sheet accordingly.</p> <p><b>Reminder:</b> The fraud coordinator must verify the validity of Form 10498-B before accepting the "CC" statute.</p>				

**Exhibit 4.8.11-1 (Cont. 5) (03-29-2017)****Reviewing Incoming Cases Submitted for Suspense - Statute Protection Job Aid**

	Yes	No	N/A	Remarks/References
<p><b>Step 5: Is there a 25% omission of income per IRC 6501(e)?</b> (“NN” statute) [Or any other provision extending the statute? See alpha listing IRM Exhibit 25.6.23-3.] [E.g. “UU” - IRC 6501(c)(8) – which opens the statute with respect to offshore adjustments and related statutory adjustments only].</p> <p><b>If yes</b>, verify the 25% omission calculation and the determination for the application of the six-year statute is accurate. (Careful review of the 25% omission of income calculation is required. IRM 25.1.4.3.8.1). Continue to next step.</p> <p><b>Remember:</b> The taxpayer’s share of <b>Gross</b> Partnership / S-Corporation income must be used for this computation. Copies of the related flow-thru returns must be in the case file.) See 25% omission template for an example. Exhibit 4.8.11-3 and/or IRM Exhibit 25.1.4-1. There is also a spreadsheet template available on the TS Fraud SharePoint site.</p> <p><b>Note:</b> A copy of the computation should be attached to the return even when determined that the IRC 6501(e) statute does not apply. IRM 25.1.4.3.10(6) bullet 3 (applies to both Admin and GJ). In general the Field is responsible for this, and you should not be completing the computation or making the determination for them.</p> <p><b>If no</b>, ensure ASSED is correct on Masterfile, AIMS, and ERCS, Form 895 is correct, and notate ASSED on Suspense Control Sheet. Skip to Step 9.</p>				



## Exhibit 4.8.11-1 (Cont. 6) (03-29-2017)

### Reviewing Incoming Cases Submitted for Suspense - Statute Protection Job Aid

	Yes	No	N/A	Remarks/References
<p><b>Step 5a: Once the calculation is verified and there is TM approval to allow the three-year statute to expire:</b></p> <ul style="list-style-type: none"> <li>• Update the statute to the <b>live</b> six year statute. (Technical Services does not utilize the “NN” alpha statute) Notate Form 895 and Suspense Control Sheet.</li> <li>• If the IRC 6501(e) statute is applicable, but was not considered by the group, you may prepare the 25% computation if all of the necessary information available, but in general you should return the case to the group to make the appropriate determination. Prepare Form 3990, Advisory report. (If less than one year remains on the live six year statute, Form 10498-B procedures are required to be completed by the group).</li> <li>• If another alpha statute applies, verify the accuracy and notate on Form 895 and Suspense Control Sheet.</li> </ul> <p>Continue to next step.</p> <p><b>Note:</b> If no other provision holds the statute open, the case should reflect a “CC” statute.</p>				Ensure proper notations and approvals on Form 895 and Suspense Control Sheet.

**Exhibit 4.8.11-1 (Cont. 7) (03-29-2017)****Reviewing Incoming Cases Submitted for Suspense - Statute Protection Job Aid**

	Yes	No	N/A	Remarks/References
<p><b>Step 5b: IRM 4.8.11.3.5.3(3) – ASED Alpha Codes - "CC" - Joint Investigation:</b></p> <ul style="list-style-type: none"> <li>• "CC" should only be used when no other live statute is applicable.</li> <li>• "CC" is used for tax periods covered by a Form 10498-B (or equivalent memorandum signed by Examination and Criminal Investigation), stating that no consent to extend the statute should be secured, or for tax periods for which permission to solicit consent to extend the statute was obtained but the taxpayer did not sign the consent. See IRM Exhibit 25.6.23-3 under "CC-Joint Investigation". An appropriate statement in the remarks section of Form 895 would be: "Form 10498-B approved on [date signed by the territory manager or the area director]".</li> <li>• "CC" may also be used with a tax return, in a joint investigation case, having a statutory period for assessment that expired before control of the return was established on AIMS/ERCS and prior to assignment to an examiner or specialist.</li> <li>• If CI withdraws from the investigation prior to the expiration of the live statute, the statute controls must be updated to reflect the live statute expiration date, or other applicable alpha statute date.</li> </ul> <p><b>Note:</b> This requirement applies to tax years for which Form 10498-B was previously executed allowing the civil statute to expire, but for which the normal statute is still open (live) when the criminal investigation concludes. Necessary action to protect the civil statute must be re-determined for such tax year(s) based upon the outcome of the criminal investigation, which would now be known. Alpha code "CC" is <b>not valid</b> once jurisdiction of the case is released to Examination by CI.</p> <p>Continue to Step 9.</p>				

## Exhibit 4.8.11-1 (Cont. 8) (03-29-2017)

### Reviewing Incoming Cases Submitted for Suspense - Statute Protection Job Aid

	Yes	No	N/A	Remarks/References
<b>Step 6: Is there at least one year remaining on the IRC 6501 (e) statute? If yes, skip to Step 9 for penalty considerations. If no, continue to next step.</b>				
<b>Step 7: Has the IRC 6501(e), or other open statute been protected?</b> (Form 10498-B prepared and processed.) <b>If yes</b> , proceed to step 8. <b>If no</b> , and <ul style="list-style-type: none"> <li>One year does <b>not</b> remain on the IRC 6501(e) statute, return the case to group to verify the 25% omission calculation and prepare and process Form 10498-B.</li> <li>The IRC 6501(e) statute has expired, determine if IRC 6501(c) Fraud, or some other provision holds the statute open. (This may require written concurrence from Counsel). Update to appropriate alpha statute. (e.g. "CC").</li> <li>If no other provision applies and the IRC 6501(e) statute has expired, advise the manager that the statute was not properly protected and prepare a Preliminary Form 3999 Statute Expiration Report. IRM 25.6.1.13.2.8.1(5). See also Exhibit 4.8.11-6, also available on the TS Fraud SharePoint site.</li> </ul> Return case to group with Form 3990. Prior to returning the case to the group, proceed to Step 9 for case review and penalty considerations.				
<b>Step 8: Verify Form 10498-B was executed properly.</b> <ul style="list-style-type: none"> <li>Form 10498-B has been signed by the GM, SSA, SAC and TM (prior to the expiration of the IRC 6501(e) statute) and is attached to the return. Verify notations on Form 895.</li> <li>If permission was granted to solicit consent, verify the consent was sent. If the consent was signed and executed, the statute should be updated accordingly.</li> <li>If not signed, verify follow up Letter 928 sent to all authorized parties.</li> </ul> Continue to Step 9				<p>Note the date F10498-B was secured and executed on Suspense Control Sheet.</p> <p>Note date you sent Letter 928.</p>

**Exhibit 4.8.11-1 (Cont. 9) (03-29-2017)****Reviewing Incoming Cases Submitted for Suspense - Statute Protection Job Aid**

	Yes	No	N/A	Remarks/References
<p><b>Step 9: When reviewing the RAR for accuracy, consider community property issues if applicable to your state.</b> See IRM 25.18.1.2, Determining if community property laws apply and IRM Exhibit 25.18.1-1.</p> <p><b>Prior to returning the case to the group, proceed to next steps for penalty considerations.</b></p> <p><b>Note:</b> A review of the case file for any significant deficiencies including but not limited to lack of development of any issue(s) and lack of proper documentation should be completed prior to returning any case to the group.</p> <p><b>PENALTY CONSIDERATIONS:</b> It is important that fraud be developed to the fullest extent possible <b>prior</b> to suspending any case since these factors may be relied upon to make future assessments. The entire case file should be reviewed for any and all issues including proper penalty consideration. IRM 4.8.2.7.1 and IRM 4.8.11.8 and subsections thereafter.</p>				

## Exhibit 4.8.11-1 (Cont. 10) (03-29-2017)

### Reviewing Incoming Cases Submitted for Suspense - Statute Protection Job Aid

	Yes	No	N/A	Remarks/References
<p>IRM 25.1.6.1 (3) provides as follows: <b>Civil fraud penalties will be asserted when there is clear and convincing evidence to prove that some part of the underpayment of tax was due to fraud. Such evidence must show the taxpayer's intent to evade the assessment of tax, which the taxpayer believed to be owing. Intent is distinguished from inadvertence, reliance on incorrect technical advice, sincerely-held difference of opinion, negligence or carelessness. In the case of a joint return, intent must be established separately for each spouse as required by IRC 6663 (c). The fraud of one spouse cannot be used to impute fraud by the other spouse. Thus, the civil fraud penalty may be asserted only on one spouse, unless there is sufficient evidence that both spouses participated in the fraudulent act(s) resulting in the underpayment reported in their joint return. Have the appropriate penalties been considered, documented and recommended for assessment?</b></p> <p><b>If no</b>, continue to Step 10.</p> <p><b>If yes</b>, verify:</p> <p><b>Filed Returns:</b></p> <ul style="list-style-type: none"> <li>• IRC 6663, Fraud penalty asserted</li> <li>• Indicators of fraud documented</li> <li>• Evidence in file to support penalty</li> <li>• If the return was filed MFJ, has a write up that has been prepared detailing the clear and convincing evidence of fraud on the part of each spouse or only one culpable spouse?</li> </ul> <p><b>SFR Returns:</b></p> <ul style="list-style-type: none"> <li>• IRC 6651(f), Fraudulent Failure to File asserted</li> <li>• Overt acts documented - See IRM 25.1.7.7(6)</li> <li>• Evidence in file to support penalty</li> <li>• Married filing joint is an election; therefore, SFR returns are either Single or MFS status. IRC 6651(a)(2), Failure to Pay Penalty and IRC 6654 / IRC 6655, Estimated Tax Penalty.</li> </ul> <p>See IRM 4.8.11.9.3.6</p> <p><b>Continue to Step 11 if this is a SFR case. Otherwise, go to Step 12.</b></p>				

**Exhibit 4.8.11-1 (Cont. 11) (03-29-2017)****Reviewing Incoming Cases Submitted for Suspense - Statute Protection Job Aid**

	Yes	No	N/A	Remarks/References
<p><b>Step 10: Were all penalties adequately developed, documented and proposed?</b> (fraud coordinator should verify adequate factual development and that documentation of the badges of fraud are contained in the case file.)</p> <p><b>For Filed Returns:</b></p> <ul style="list-style-type: none"> <li>• IRC 6663, Civil Fraud Penalty asserted?</li> <li>• IRC 6662, Accuracy Penalty and Alternative proposed? [consider alternative penalty only if statute is open]</li> </ul> <p><b>For SFR Returns:</b></p> <ul style="list-style-type: none"> <li>• IRC 6651(f), Fraudulent Failure to File, or alternatively</li> <li>• IRC 6651(a)(1), Failure to File, and</li> <li>• IRC 6651(a)(2), Failure to Pay, and</li> <li>• IRC 6654 / IRC 6655, Estimated Tax Penalties (SFR returns), asserted?</li> </ul> <p><b>If yes</b>, continue to Step 11.  <b>If no</b>, prepare Form 3990 and return the case to the group for assertion and write up of all appropriate penalties.</p>				
<p><b>Step 11: Was a delinquent return secured or filed during the criminal proceedings?</b></p> <p><b>If no</b>, continue to Step 12.  <b>If yes</b>, verify one of the following actions has been taken with regards to the Fraudulent Failure to File penalty under IRC 6651(f). Then continue to step 12. See also IRM 25.1.3.4(6), IRM 4.8.11.9.3.7 and IRM 25.1.7.</p>				



## Exhibit 4.8.11-1 (Cont. 12) (03-29-2017)

### Reviewing Incoming Cases Submitted for Suspense - Statute Protection Job Aid

	Yes	No	N/A	Remarks/References
<p>1. The tax reflected on the delinquent return and the FFTF penalty was assessed within 3 years from the date the return was filed. NOTE: the penalty assessment is <b>not</b> subject to deficiency proceedings; therefore the penalty assessment is not included on a SND. See Field Service Advice of Advisory 200051040. <b>OR</b></p> <p>2. The taxpayer disagreed with the FFTF penalty and filed an Appeals protest.* (Assuming there was sufficient time on the statute). <b>OR</b></p> <p>3. Form 10498-B was prepared, approved and executed to allow the case to be processed to suspense without assessment of the tax and FFTF penalties. (IRM 1.2.13.1.11 Policy Statement 4-26 considerations). <b>OR</b></p> <p>4. A report was issued to the taxpayer with respect to the FFTF penalty attributable to the tax liability reflected on the delinquent return with Letter 2777. In the event the taxpayer does not appeal the proposed IRC 6651(f) penalty, it should be assessed immediately via Form 3870.</p> <p><b>Note:</b> Area Counsel Approval is required prior to assertion of the FFTF penalty. IRM 25.1.7.7.1(3)(Note) and IRM 4.10.8.12.1(11). These procedures apply only to the tax due on the filed return. Audit adjustments proposed on the filed return would be subject to deficiency procedures and included on the statutory notice of deficiency and assessed under IRC 6663 or IRC 6651(f). <b>The statute should have been updated to a live statute, based on the date the return was filed.</b></p> <p>If these procedures were not followed, prepare a Preliminary Form 3999, Statute Expiration Report, and return the case to the group. (Required if the FFTF penalty was not asserted within the normal three-year statute.)</p>				

**Exhibit 4.8.11-1 (Cont. 13) (03-29-2017)****Reviewing Incoming Cases Submitted for Suspense - Statute Protection Job Aid**

	Yes	No	N/A	Remarks/References
<b>Step 12: Do ERCS, AIMS, Mastefile have the correct data?</b> <b>If yes</b> , continue to Step 13. (SFR returns utilize EE statute.) <b>If no</b> , update ERCS, AIMS, and Masterfile, accordingly. Continue to Step 13.				
<b>Step 13: Has Form 895 been properly updated to reflect the correct statutes?</b> <b>Note:</b> Appropriate narrative regarding statute updates should be included on the Form 895. See IRM 25.6.23.6.2, IRM 25.6.23.6.6.1, and IRM 25.6.23.6.7. <b>If yes</b> , continue to Step 14. <b>If no</b> , update the Form 895, accordingly. Continue to Step 14.				

## Exhibit 4.8.11-1 (Cont. 14) (03-29-2017)

### Reviewing Incoming Cases Submitted for Suspense - Statute Protection Job Aid

	Yes	No	N/A	Remarks/References
<p><b>Step 14: Update status code / review type / suspense type if case qualifies for fraud / grand jury suspense.</b></p> <p>Complete the suspense control sheet accordingly. Exhibit 4.8.11-2. The Suspense Control Sheet is also available on the TS Fraud SharePoint site. Update AIMS/ERCS record as noted. See IRM 4.8.11.3.6.3 and IRM Exhibit 4.8.2-1.</p> <ul style="list-style-type: none"> <li>• Fraud (Administrative) - Status Code 32, Review Type 45, Suspense Type 591</li> <li>• Grand Jury - Status Code 36, Review Type 46, Suspense Type 592</li> <li>• Fugitives - Status Code 32 / 36, Review Type 43, Suspense Type 591 / 592</li> </ul> <p>Verify Mastefile -Z freeze is present on case and all related cases. If TC 914 not present, notify the special agent.</p> <p><b>Note:</b> The case(s) remains in suspense until CI releases the case for civil disposition. (Form 13308 <i>Criminal Investigation Closing Report</i>, is received.)</p> <p><b>If case does not qualify for suspense because it is not included on the Notice of Department of Justice Referral memorandum:</b></p> <p>See IRM 1.2.13.1.11, <b>Policy Statement 4-26 (Formerly P-4-84)</b></p> <ul style="list-style-type: none"> <li>• Contact special agent and revenue agent to verify facts of review and discuss criteria for fraud suspense. (Possible Policy Statement 4-26 issues).</li> <li>• Discuss reasons why case does not qualify for suspense with TS group manager, if needed.</li> <li>• Verify -Z freeze is not present on any module(s).</li> <li>• Prepare Form 3990 to return case to group for completion of the audit.</li> </ul> <p>See Step 15 for various IRM references.</p>				

**Exhibit 4.8.11-1 (Cont. 15) (03-29-2017)****Reviewing Incoming Cases Submitted for Suspense - Statute Protection Job Aid**

<b>Step 15: Distinction between Administrative Fraud and Grand Jury Cases</b>	<b>IRM 25.1.4- Administrative Fraud</b>	<b>IRM 25.1.5- Grand Jury</b>
Duties and Responsibilities	IRM 25.1.4.3.2 IRM 25.1.3.4	IRM 25.1.5.3 IRM 25.1.3.4
Examination Controls	IRM 25.1.4.3.5	IRM 25.1.5.2(5)
Joint or Parallel Investigations	IRM 25.1.4.3.6 IRM 4.32.2.6	IRM 25.1.5.4 IRM 25.1.4.3.6 IRM 4.32.2.6
Related / Prior / Subsequent	IRM 25.1.4.3.7	IRM 25.1.5.2(5)
Statute of Limitations	IRM 25.1.4.3.8 IRM 25.6	IRM 25.1.5.2(6) IRM 25.6
Pre-Prosecution Report	IRM 25.1.4.3.10 IRM 4.10.8.12 through IRM 4.10.8.15, as applicable IRM 4.23.10 IRM 4.23.9	IRM 25.1.5.2(3) IRM 25.1.4.3.10 IRM 4.10.8.12 through IRM 4.10.8.15, as applicable IRM 4.23.10 IRM 4.23.9
Form 4665	IRM 25.1.4.310(6)	IRM 25.1.5.2(4)
TS Suspense	IRM 25.1.4.3.11	IRM 25.1.5.2
Status Memorandum	N/A	IRM 25.1.5.2(4) Refer also to 2/25/13 revision of IRM IRM 25.1.2(4)
Unique Features		IRM 25.1.5.4
Discontinued Investigation and / or Declined by DOJ	IRM 25.1.4.3.9 IRM 25.1.3.5	IRM 25.1.4.3.8 IRM 25.1.3.5
Return Preparers	IRM 25.1.3.6 IRM 4.1.10 IRM 4.11.51 IRM 4.23.17	IRM 25.1.3.6 IRM 4.1.10 IRM 4.11.51 IRM 4.23.17
Civil Resolution	IRM 25.1.4.4 IRM 25.1.4.5 IRM 4.23.9.6.7.2	IRM 25.1.5.5 IRM 25.1.4.5 IRM 4.23.9.6.7.2

## Exhibit 4.8.11-2 (03-29-2017)

### Fraud and Grand Jury Suspense Control Sheet

Name	Date	Status Code	Review Type	Suspense Type
Signature of fraud coordinator				
Signature of TS manager				

<b>Taxpayer Name:</b>	<b>TIN:</b>
Revenue Agent:	Form:
Telephone Number:	Related Taxpayers: (Name/TIN)
Special Agent:	
Telephone Number:	
Power of Attorney:	

Summary of Returns Controlled in Suspense:	Tax Period	Tax Period	Tax Period	Tax Period	Tax Period	Tax Period	Tax Period	Tax Period
Form Number								
Prosecution or Non-Prosecution								
AIMS Control								
AIMS Freeze Code								
Date return due								
Extension date								
<b>Date Filed</b>								
Number of months delinquent								
<b>Three-year Statute Date</b> (IRC 6501(a))								
Three-year extension secured? Y/N								
Three-year Extended date								
IRC 6501(e) applies? Y/N								
<b>Six-year Statute Date</b> (IRC 6501(e))								
Six-year Extension Secured? Y/N								
Six-year Extended Date								
IRC 6501(c) applies? Y/N/Pending								

**Exhibit 4.8.11-2 (Cont. 1) (03-29-2017)****Fraud and Grand Jury Suspense Control Sheet**

Summary of Returns Controlled in Suspense:	Tax Period	Tax Period	Tax Period	Tax Period	Tax Period	Tax Period	Tax Period	Tax Period
Statute Expiration Approvals Summary (dates approved / executed)								
Form 10498-B (three-year)								
Form 872 (three-year)								
Form 10498-B (six-year)								
Form 872 (six year)								
<b>AIMS Statute</b>								
Return: Original / Copy / Transcript								
Date Examination Initiated - TC 420								
Date CI Initiated - TC 914								
Source Code								
Project Code								
Tracking Code								
Aging Reason Code								
Special Push Code / Message Code								
PICF Code								
ICE Indicator								
Form 895 Returned Y/N								
<b>Information for Prior / Subsequent Cases NOT Maintained in Suspense (as applicable):</b>								
TP Name or Name Control								
TIN								
MFT / Period (e.g., 30 / 201012)								
ASED								
Date CI Initiated - TC 914								
Date Examination Initiated - TC 420								
Status Code (if applicable)								
Other Information:								



## Exhibit 4.8.11-2 (Cont. 2) (03-29-2017)

### Fraud and Grand Jury Suspense Control Sheet

Summary of Returns Controlled in Suspense:	Tax Period	Tax Period	Tax Period	Tax Period	Tax Period	Tax Period	Tax Period	Tax Period
Date received in TS (Status Code 21)								
Date accepted into Suspense (Status Code 32 / 36)								
Approximate size / volume of physical case file(s) (e.g., # of boxes)								
Location of suspense files								
Additional Comments:								

**Exhibit 4.8.11-3 (03-29-2017)****Computation of 25 Percent Omission From Gross Income**

Item	Amount Per Return	Adjustments	Amount as Corrected
1. Wages, Salaries, Tips, etc.			
2. Interest Income (do not include exempt income)			
3. Dividends (net of exclusion)			
4. Gross Income from Business or Farm (before cost of sales)			
5. Gains from Sales of Property (not the gross sales price)*			
6. Proportionate Share of Gross Partnership Income (without expenses)			
7. Proportionate Share of Gross S Corporation Income (without expenses)			
8. Gross Rents or Royalties			
9. Trust Flow-through Income**			
10. Other Items of Gross Income			
a. Overstatement of unrecovered cost or other basis			
b.			
c.			
d.			
11. Total Gross Income			
12. Omitted Income (subtract Line 11, Column A from line 11, Column C)			
13. Percent Omission (divide Line 12 by Line 11, Column A)			
if greater than 25%, the six-year statute applies			

\*Include net gain from each transaction. Do not include net losses.

\*\*Include TP's share of the income distribution deduction shown on Form 1041.

Refer to IRM 25.1.4.3.8.1, *IRC 6501(e), Six-Year Statute*, for information on what is included in gross income for the IRC 6501(e) computation.

## Exhibit 4.8.11-4 (03-29-2017)

### Monitoring Cases in Suspense - Statute Protection Job Aid

**Any and all actions completed by the suspense clerk, fraud coordinator and / or management must be documented on the case file's activity record.**

	Yes	No	N/A	Date Completed
<p><b>Step 1: Six-Month Checks</b> - IRM 4.8.11.4.1 - May be completed by suspense clerk (to extent appropriate). All statute or issue determinations must be made by the fraud coordinator and / or manager.</p> <p>When a case is initially processed into suspense, and at each six-month action date the following statute procedures will be followed:</p> <ol style="list-style-type: none"> <li>Run a suspense report in ERCS to identify all Suspense Type 591/592 cases with expiring (or expired) action date. Then complete the following actions on these cases.</li> <li>Secure current ERCS, AIMS, and IDRS (Masterfile) transcripts for all taxpayers / returns where actions are due.</li> <li>Compare ERCS, AIMS, and Masterfile – verify each TIN, MFT, and tax period is properly controlled by Examination and CI, and that all records match accordingly. Statutes are the most critical, but other items should match as well (just like when completing IVL). AIMS / ERCS controls must match if controlled regardless if the case is GJ. (<i>Note: ERCS-only penalty cases (P1 / P2 / P9 / C6, etc.) will not be reflected on AIMS</i>).</li> <li>Note any significant changes and updates and pursue accordingly. Discuss with special agent as warranted (see SA contact below).</li> <li>Weekly AIMS / ERCS report showing “dropped from AIMS” requires immediate action and proper monitoring until the records are restored to AIMS. (See non filer check procedures.)</li> <li>Verify Form 895 is present and accurate for each return (even if not yet due per ERCS) and the Suspense Control Sheet(s) are attached to case file(s) and properly documented. (The purpose of Form 895 is to specify the statute date and clearly explain any updates / changes to the statute.)</li> <li>Initials of both the fraud coordinator and the manager are required before case was processed into suspense. (six-year statute date cannot be “NN”; must be the “live” statute). <i>If any changes are needed, be sure to update and re-initial accordingly.</i></li> <li>Verify TC 914, TC 916, or TC 918 is posted to each taxpayer / return in suspense (and that all years are being investigated for tax or tax-related charges).</li> </ol> <p><b>Note:</b> Admin case with Cooperating RA should have AIMS controls on all years controlled criminally per IRM 25.1.4.2(5), in GJ cases no AIMS controls should be added after GJ status approved IRM 25.1.5.2(5).</p>				

**Exhibit 4.8.11-4 (Cont. 1) (03-29-2017)****Monitoring Cases in Suspense - Statute Protection Job Aid**

	Yes	No	N/A	Date Completed
<p>i. Contact special agent (SA) to ensure the criminal investigation is still active. (E-mail is suggested so we will have confirmation in writing - see additional items requiring written confirmation below.)</p> <p>j. Confirm (in writing) that no original and/or amended returns have been filed with SA. If returns have been filed, secure "certified" copies from SA. If needed, coordinate with SA about having the TC 976 / 977 and TC 971 AC 282 posted to show that a return received and set the ASER. If a return is secured, it should be reviewed by SA and cooperating RA, and a decision must be made as to whether the return should be processed or not. Secure CI's determination in writing. CI and / or Field Examination are responsible for posting that the return is received, updating the ASER, and processing the return accordingly. Refer to IRM 25.1.3.4 (6). Regardless of the decision made by CI regarding process the return(s), the statute of limitations <b>must</b> be appropriately updated, monitored, and protected going forward. TS fraud coordinator may provide additional procedural guidance to SA / RA if needed.</p> <p>Fraud coordinator should independently review the return(s) and verify the statutes. Update AIMS / ERCS, Form 895, and Suspense Control Sheet(s) accordingly.</p> <p>k. If EE statute, proceed to Step 2, Additional Status Check Procedures for Non-Filers.</p> <p>l. If SA confirms that the taxpayer is a fugitive, update to Review Type 43 and refer to IRM 4.8.11.4.1.2.</p>				

## Exhibit 4.8.11-4 (Cont. 2) (03-29-2017)

### Monitoring Cases in Suspense - Statute Protection Job Aid

	Yes	No	N/A	Date Completed
<p><b>Step 2: Additional Status Check Procedures for Non-Filers -</b> IRM 4.8.11.4.1.1 and Exhibit 4.8.11-5 - May be completed by suspense clerk (to extent appropriate). All statute or issue determinations must be made by the fraud coordinator and / or manager. At each six-month check, non-filer checks must be completed and documented for each "EE" tax year. See IRM 25.25.10.6.8 for statute considerations for frivolous returns which may still be valid for statute purposes.</p> <ul style="list-style-type: none"> <li>a. Verify TC 914, TC 916, or TC 918 (Masterfile -Z freeze) is posted to each year under investigation. If SA missed a year / return be sure to notify SA.</li> <li>b. Print SUMRY for TIN. If a SUMRY exists, print TXMODA for each non-filed year. Review TXMODA for TC 599. (Or any other TC 59X which may indicate a return has been filed.) If closing code indicates a return was secured, further investigation needed.</li> <li>c. Print AMDISA, IMFOLT/BMFOLT and TRBDV for each return / year controlled in suspense. Check AMDISA statute against TXMODA / IMFOLT / BMFOLT statute. Look for TC 97X postings on AMDISA. Review TXMODA / IMFOLT / BMFOLT for TC 59X, TC 976, TC 977, TC 560, TC 29X, TC 30X and/or any payments or balances due. Discuss with SA and/or cooperating RA as warranted.</li> <li>d. If TXMODA / IMFOLT / BMFOLT reflects an ASSED date, this year must be investigated further.</li> <li>e. Review TXMODA / IMFOLT / BMFOLT for push codes. If push code 020 (delinquent return) is present further action warranted. Note a delinquent return with push code 020 will not post if TC 914 is present.</li> </ul> <p><b>Note:</b> SFR push codes are 021, 036 and 049. Push code 021 does not post a TC 150, and generally is no longer used. Push code 036 will generate a TC 150 but will not override a TC 91X. If payments are on the module, a TC 570 (Masterfile -R freeze) must be posted before using Push Code 036, otherwise the payments will refund. Examiner must submit Form 3177 to post a TC 570 (E-fax to CCP). Examiner must use Push Code 049 to establish AMS control of returns (if warranted) with a 91X freeze; otherwise, TC 150 will not post.</p> <ul style="list-style-type: none"> <li>f. Contact special agent to determine if the taxpayer has filed any returns. And if so, discuss what will be done with them and why. Secure "certified" copies from SA. Refer also to IRM 25.1.3.4 (6) and Item 1j above.</li> </ul>				

**Exhibit 4.8.11-4 (Cont. 3) (03-29-2017)****Monitoring Cases in Suspense - Statute Protection Job Aid**

	Yes	No	N/A	Date Completed
<p><b>Step 3: Imminent Statute Case Procedures</b> - On the first day of every month, a statute report is run on ERCS for all suspense cases. If there are 210 days or less remaining on a statute, the following procedures should be followed. All statute or issue determinations must be made by the fraud coordinator and / or manager.</p> <ul style="list-style-type: none"> <li>a. Retrieve case file.</li> <li>b. Print AMDIS reflecting all years controlled and related statute.</li> <li>c. Place the main file in a red folder.</li> <li>d. Research PACER to determine if case is still ongoing.</li> <li>e. Contact special agent to confirm criminal investigation ongoing and / or determine status of the investigation and pending charges.</li> <li>f. Verify the specific charges being developed by CI. Are the charges tax or tax-related charges? Confirm the years under investigation.</li> <li>g. If case discontinued or to be discontinued, follow DI steps below.</li> <li>h. Determine which ASER is / are imminent (three-year / six-year) and follow the appropriate procedures below.</li> </ul>				



## Exhibit 4.8.11-4 (Cont. 4) (03-29-2017)

### Monitoring Cases in Suspense - Statute Protection Job Aid

	Yes	No	N/A	Date Completed
<p><b>Step 4: Discontinued Investigation (DI)</b> - If following contact with special agent, the fraud coordinator determines the case has been, or is going to be discontinued:</p> <ul style="list-style-type: none"> <li>Request Form 13308, <i>Criminal Investigation Closing Report</i>, (if not already received).</li> <li>Request Form 4135 is processed to post TC 912 / 916 to remove -Z freeze.</li> <li>Review statutes and update as appropriate. (e.g., "CC" statutes are no longer applicable once CI discontinues the investigation.) Refer to IRM 4.8.11.3.5.3.</li> <li>Determine if case must be returned to field group for additional development. (Was the RAR issued to the taxpayer prior to suspense? Is there adequate time on the statute of limitations to allow for issuance of a 30-day report? Was the examiner assigned as the cooperating RA on the GJ investigation?)</li> <li>Determine if a statutory notice of deficiency (SNOD) can be issued on any imminent tax year(s). (Split case and return non-imminent years to the field group, if necessary).</li> </ul> <p><b>Note:</b> The statute of limitations should either be live or updated from "CC" to "OO".</p> <ul style="list-style-type: none"> <li>If SNOD can be issued, is Counsel approval required? IRM 4.8.9.9.2.1.</li> <li>Prepare SNOD and route to Counsel accordingly.</li> <li>If SNOD cannot be issued from Suspense, prepare memo and return case to group to commence with civil action accordingly. Update statutes as appropriate. Refer to IRM Exhibit 25.6.23-3, <i>Updating the Statute on AIMS</i>.</li> </ul>				

**Exhibit 4.8.11-4 (Cont. 5) (03-29-2017)****Monitoring Cases in Suspense - Statute Protection Job Aid**

	Yes	No	N/A	Date Completed
<b>Step 5a: If IRC 6501(a) - three-year statute is imminent -</b> <ul style="list-style-type: none"> <li>Determine if IRC 6501 (e) or any other alpha statute applies to this year. (See also Incoming Case job aid Exhibit 4.8.11-1 step 5).</li> <li>If 25% omission exists, prepare an IRC 6501 (e) computation if it is not already in the case file.</li> <li>Prepare Form 10498-B.</li> <li>Prepare Form 1725 - Routing Slip, or routing e-mail as appropriate. <i>(Note relevant facts on the "buck slip" / e-mail which may assist CI with any recommendations. e.g. Review the case file to determine if the taxpayer has previously signed statute extensions for any related years).</i></li> <li>E-mail (secure e-mail) Form 10498-B, routing instructions (Form 1725 or embedded in e-mail) and any other relevant documents to TS manager for approval/signature. TS manager forwards the signed package to supervisory special agent (SSA). SSA sends to special agent In charge (SAC). SAC or designee sends to TS territory manager. TS TM sends back to fraud coordinator or TS manager. (These Instructions are included on Form 10498-B).</li> <li>Optional: Once the e-mail and Form 10498-B is sent to SSA, instruct TE (if applicable) to update ERCS with a manual action date based on due date for response from CI (generally 10 days).</li> <li>Monitor e-mail and case file for response from SAC / TM. If response not received by due date a follow-up with CI is warranted.</li> <li>Once the signed and executed Form 10498-B is received, follow Form 10498-B process below (Step 6).</li> </ul>				
<b>Step 5b: If IRC 6501(e) - six-year statute is imminent -</b> Same basic procedure as indicated in Step 5a above and on Incoming Case Job Aid Step 5. <ul style="list-style-type: none"> <li>Prepare Form 10498-B. Review case file to determine if taxpayer has signed extensions for related years in the past.</li> <li>Verify IRC 6501 (e) computation.</li> <li>If applicable, follow procedures shown above.</li> </ul>				

## Exhibit 4.8.11-4 (Cont. 6) (03-29-2017)

### Monitoring Cases in Suspense - Statute Protection Job Aid

	Yes	No	N/A	Date Completed
<p><b>Step 6: Form 10498-B Process / Response from CI / Solicitation</b> - IRM 25.1.4.3.8, IRM 4.8.11.4.2 (and subsections thereafter), and IRM 25.6.22.</p> <p>a. <b>If CI recommends solicitation of consent:</b></p> <ul style="list-style-type: none"> <li>• Verify current addresses for TP and POA as applicable</li> <li>• Prepare appropriate consent form (Form 872, SS-10, etc.). Generate multiple copies as applicable.</li> <li>• Prepare Letter 907 and Letter 937 (as applicable)</li> <li>• Include current revision of Pub 1035</li> <li>• Consent package must be reviewed by fraud coordinator and / or manager</li> <li>• If solicitation is to be made by mail (general rule) mail the consent package(s) accordingly. Notify SA.</li> <li>• If solicitation is to be made in person, provide consent package to SA. SA will deliver in person.</li> <li>• Notate mail / in-person deliver date on Form 895.</li> <li>• Set manual ERCS action date if desired.</li> </ul> <p>b. <b>If taxpayer / representative signs consent(s):</b></p> <ul style="list-style-type: none"> <li>• Fraud coordinator and /or manager must review the consent(s).</li> <li>• Manager must execute consent, if valid.</li> <li>• Notify SA regarding receipt and validity of consent(s).</li> <li>• prepare Letter 929 and Letter 937 (as applicable)</li> <li>• Mail letters and one original executed consent back to taxpayer (copy to POA).</li> </ul> <p><b>Note:</b> If TP / POA only send back one original signed consent, we keep that and send copies back accordingly.</p> <ul style="list-style-type: none"> <li>• Update statute via Form 5348, update Form 895 and Suspense Control Sheet. Update to Suspense Type 591 / 592 accordingly.</li> <li>• Return case to suspense.</li> </ul> <p><b>If no response received:</b></p> <ul style="list-style-type: none"> <li>• Notify SA</li> <li>• Prepare Letter 928 to follow up</li> <li>• Update ERCS action date accordingly</li> <li>• Notate Form 895</li> <li>• Proceed accordingly based on response received on follow-up</li> </ul>				

**Exhibit 4.8.11-4 (Cont. 7) (03-29-2017)****Monitoring Cases in Suspense - Statute Protection Job Aid**

	Yes	No	N/A	Date Completed
<p><b>If no response received after second attempt</b>, determine if any other provision or alpha statute applies. (Most common is IRC §6501(c)(1), fraud or false return but other provisions may apply.)</p> <ul style="list-style-type: none"> <li>• If no response received and IRC 6501 (e), (or other provision) applies, update statute to applicable <b>live</b> statute using Form 5348. Notate and update statute on Form 895 and Suspense Control Sheet. Submit to manager for review, approval, and update. Update Suspense Type 591 / 592. Return case to suspense.</li> <li>• If no response received and IRC 6501 (e) is expiring or no other provision will keep the statute open, or If adequate evidence in case file to support the assertion of IRC 6663 and / or IRC 6501 (c)(1), and Policy Statement 4-26 balancing is not required, update ASER via Form 5348 to "CC" per the executed Form 10498-B.</li> <li>• Update Form 895. Secure manager approval on Form 895.</li> <li>• Update action date to default date or next appropriate action date.</li> <li>• Return case to suspense.</li> </ul> <p><b>If CI recommends issuance of SNOD:</b></p> <ul style="list-style-type: none"> <li>• The SNOD will be prepared by a qualified RA reviewer in accordance with IRM 4.8.9. Copies will be provided to CI. See also item 4 above.</li> <li>• The years/returns where the SNOD was issued are essentially no longer in suspense and all normal processing procedures apply. CI must be kept in the loop.</li> </ul> <p><b>If CI does not recommend solicitation of consent or issuance of Statutory Notice of Deficiency</b>, a written explanation should accompany Form 10498-B stating how solicitation and/or issuance of the SNOD could imperil the criminal investigation (this requirement is listed on the form). Update statutes, Form 895, Suspense Control Sheet, and action dates accordingly.</p> <p>Policy Statement 4-26 considerations: On rare occasions, the fraud coordinator may disagree with the decision to allow the statute to expire. (e.g. if it is known that the primary charges against an individual are not tax-related and the civil tax amounts are material, or a return associated with the case that is not being pursued by CI is at issue). A more in-depth discussion should occur with CI, and Policy Statement 4-26 procedures should be initiated as appropriate.</p> <p>When the signed Form 10498-B is received from CI, it is forwarded to the Technical Services territory manager for signature. Once Policy Statement 4-26 issue resolved, proceed accordingly.</p>				

**Exhibit 4.8.11-5 (03-29-2017)**  
**Recommended Nonfiler Checks**

<b>Step 1</b>
<b>Run SUMRY for TIN.</b> If there is a SUMRY, print TXMODA for each nonfiled year at issue. Check for TC 599. If TC 599 on module, look up TDI closing code in ADP. If closing code indicates that Collection secured a return, tax year must be further investigated. If TXMODA reflects any of the coding for IMFOLT / BMFOLT per Step 2, tax year must be further investigated.
<b>Step 2</b>
<b>Run AMDISA and IMFOLT/BMFOLT</b> Check AMDISA statute against IMFOLT statute date, and check for 97X posting on AMDISA. Check IMFOLT / BMFOLT for TC 599, 976, TC 977, TC 560, payments or a balance due.
If IMFOLT / BMFOLT reflects an ASED date, tax year must be investigated.
If AMDISA reflects 97X, tax year must be further investigated.
If IMFOLT/BMFOLT reflects TC 599. TC 976 or TC 977, tax year must be further investigated.
If IMFOLT/BMFOLT reflects TC 560, tax year must be further investigated.
If IMFOLT/BMFOLT reflects TC 290, payments, or a balance due, tax year must be further investigated.
If there is no push code on IMFOLT/BMFOLT, or there is a Push Code 020 or Push Code 021, tax year must be further investigated. No push code or Push Code 020 (delinquent) could indicate the filing of a delinquent return, and Push Code 021 (pre-2004 SFR push code) should have been updated to Push Code 036 unless fraud coordinator does not want TC 150 to post.
When transaction codes are being investigated, check Form 5345, <i>Examination Requests Non-ERCS Users</i> , (audit requests) and activity records corresponding to dates audit controls were initiated.

**Exhibit 4.8.11-6 (03-29-2017)****Form 3999 Statute Expiration Report Procedures - Statute Protection Job Aid**

<b>Statute Summary (Complete accordingly for quick reference as you work through this job aid.)</b>						
Year	Date Filed	IRC 6501(a) SOL	Extended SOL	IRC 6501(e) SOL	Extended SOL	Other SOL

	Yes	No	N/A	Remarks / References
<b>Step 1: Has the IRC 6501(a), three-year assessment statute expired for any of the examined returns?</b> <ul style="list-style-type: none"> <li>If no, a Form 3999 is not required. No further action necessary.</li> </ul>				
<b>Step 1a:</b> If yes, enter the date the return was filed and the IRC 6501(a) statute date in the chart above and continue. <ul style="list-style-type: none"> <li>Form 3999 may be required.</li> </ul>				
<b>Step 2: Was a statute extension consent (Form 872) secured timely?</b> (Verify the consent is valid.) See IRM 25.1.4.3.8, IRM 25.6.22 and Form 10949. <ul style="list-style-type: none"> <li>If no, continue. A Form 3999 may be required.</li> <li>If yes, Form 872 should be attached to the first page of the return, verify the extended statute date, and notate Form 895. If the extended statute is still open, Form 3999 is not required.</li> <li>If the extended statute is expired; Form 3999 may be required.</li> </ul>				Type of consent:  Date secured:  Extended ASER:



## Exhibit 4.8.11-6 (Cont. 1) (03-29-2017)

### Form 3999 Statute Expiration Report Procedures - Statute Protection Job Aid

	Yes	No	N/A	Remarks / References
<p><b>Step 3: Was the IRC 6501(a) statute allowed to expire via Form 10498-B noting reliance on another code section extending the statute of limitations?</b> (The most common being IRC 6501(e), six-year statute, and / or IRC 6501(c) false return or evasion.) See IRM 25.1.4.3.8, IRM 25.1.4.3.8.1, and IRM 25.6.23.6.6.2.</p> <p>If yes, notate Form 895 with the date Form 10498-B was executed allowing the statute to expire. Proceed to Step 4.</p> <p><b>Note:</b> If IRC 6651 (f), Fraudulent Failure to File (FFTF) is applicable and being asserted on the amount shown on a delinquent return, the penalty <b>must</b> be assessed prior to the expiration of the IRC 6501(a) year statute of limitations. If not assessed within IRC 6501(a) statute, a Form 3999 may be required. See Field Service Advisory 200051040.</p> <p>If no, Form 3999 may be required.</p> <p><b>Note:</b> If no other provision extends the statute of limitations, proceed to Step 8.</p>				<p>Type of approval (Form 10498-B, Balancing Memo, etc.):</p> <p>Date Secured:</p> <p>Effective ASSED:</p>
<p><b>Step 4: If IRC 6501(e), six-year statute (25% omission) was relied upon, is a valid computation attached to the return?</b> See IRM 25.1.4.3.8.1 [See Step 5 of Incoming Cases job aid.]</p> <p><b>Note:</b> If flow through entities are required to complete an accurate computation, the case file must include copies of all applicable flow-through returns. If not included, you may not have a valid 25% omission computation and Form 3999 may be required.</p> <p>If an IRC 6501 (e), six-year statute was not relied upon, skip to Step 5.</p>				
<p><b>Step 4a: Is the IRC 6501(e), six-year statute still open?</b></p> <p>If yes, ensure Form 895 is notated and AIMS is updated via Form 5348, if necessary. Form 3999 is not required.</p> <p>If no, continue. Form 3999 may be required.</p>				

**Exhibit 4.8.11-6 (Cont. 2) (03-29-2017)****Form 3999 Statute Expiration Report Procedures - Statute Protection Job Aid**

	Yes	No	N/A	Remarks / References
<b>Step 4b: Was a statute extension consent for the IRC 6501 (e), six-year statute secured timely?</b> (Verify the consent is valid). See IRM 25.1.4.3.8, IRM 25.6.22 and Form 10949. If no, Form 3999 may be required. <b>Note:</b> If no other provision extends the statute of limitations, proceed to Step 8. If yes and the statute is still open, notate Form 895 and update statute via Form 5348, if necessary. If the extended statute is expired Form 3999 may be required.				Type of consent:  Date secured:  Extended ASED:
<b>CRIMINAL INVESTIGATIONS</b>				
<b>Step 5: Was the taxpayer charged on tax or tax-related criminal charges?</b> If so, document the charges and years in the Remarks section.				
<b>Step 5a: Was the taxpayer convicted or plead guilty to tax or tax-related criminal charges?</b> If so, document the guilty charges and years in the Remarks section.				
<b>Step 5b: Was the taxpayer convicted or plead guilty to violation of IRC 7201, Tax Evasion for any year?</b> If so, document which year(s) in the Remarks section.				
<b>Step 5c: Does the IRC 7201 conviction / plea apply to the expired year(s)?</b> An IRC 7201 conviction / plea establishes collateral estoppel for fraud for those specific years, and ensures an open assessment statute. See IRM 25.1.6.4 and IRM 4.8.11.9.3.4. An IRC 7201 conviction for other years does not provide an open fraud statute for the non-conviction / non-plea years, but helps support a potential civil fraud penalty if the expired year is a relevant conduct year.				
<b>Step 6: Was a fraud statute relied upon?</b> See also Step 3.				
<b>Step 6a: Does the case file contain adequate evidence to support assertion of the civil fraud penalty?</b>				
<b>Step 6b: Is there a Counsel opinion in the case file stating that the case supports a civil fraud penalty?</b>				

## Exhibit 4.8.11-6 (Cont. 3) (03-29-2017)

### Form 3999 Statute Expiration Report Procedures - Statute Protection Job Aid

	Yes	No	N/A	Remarks / References
<b>Step 7: Has the civil fraud penalty been approved by Counsel?</b> If yes, notate Form 895 and update the statute to "OO", if appropriate. Form 3999 is not required. If no, Form 3999 may be required.				
<b>Step 8: Was the examination started AND AIMS controls initiated AFTER the IRC 6501(a) expired?</b> If yes, a Form 3999 is NOT required. See IRM 25.6.1.13.2.8.1(e)(e). If no, Form 3999 may be required.				
<b>EXCEPTIONS</b>				
<b>Step 9: Do any of the exceptions (9a - 9e below) in IRM 25.6.1.13.2.8.1(3) apply?</b> Be sure to answer each item below.				
<b>Step 9a:</b> IRM 25.6.1.13.2.8.1(3)(a) - Any return involving a net overassessment if a claim has been or can be filed or a credit or refund allowed after timely waiver and within six months after the extended assessment period. See IRC 6511(c)(2).				
<b>Step 9b:</b> IRM 25.6.1.13.2.8.1(3)(b) - Any return for which the assessment can be made because of a statutory exception, including the tolling exceptions, to the normal three-year period for assessment or the assessment period which has been extended by consent.				
<b>Step 9c:</b> IRM 25.6.1.13.2.8.1(3)(c) - Any return that is a non-TEFRA, nontaxable, flow-thru entity which is associated with an examined, taxable return.				
<b>Step 9d:</b> IRM 25.6.1.13.2.8.1(3)(d) - Any investor return where a Form 3999-T was written for the key case return. A copy of the Form 3999-T should be attached to the investor return.				
<b>Step 9e:</b> IRM 25.6.1.13.2.8.1(3)(e) - Any return where the date of approval to establish the return on AIMS or date of automatic establishment on AIMS (systemically generated establishment of returns) and the date the examination commences is after the date the assessment statute expired.				

**Exhibit 4.8.11-6 (Cont. 4) (03-29-2017)****Form 3999 Statute Expiration Report Procedures - Statute Protection Job Aid**

	Yes	No	N/A	Remarks / References
<b>Step 10: Did you answer yes to any of the items for Step 9 through 9e?</b> If yes, notate the exception on Form 895. Form 3999 is not required. <b>If no exceptions, a Form 3999 is required. Notate Form 895 and continue.</b>				
<b>Step 11: Did the statute expire before it was in a Technical Services status code (status code other than 2X or 3X)?</b> If no, proceed to Step 11B. If yes, prepare the <b>Preliminary</b> Form 3999 within three days and send it to your manager. Your manager will sign it and send it to the TM, and the GM of the Examination group who had controls at the time the ASER expired who will complete Form 3999. See IRM 25.6.1.13.2.8.1(6) thru (12). Proceed to Step 12.				
<b>Step 11a: Did the statute expire while in a Technical Services status code (Status Code 2X or 3X)?</b> If yes, prepare the <b>Final</b> Form 3999 and send it to your manager. The report is sent to all relevant parties. See IRM 25.6.1.13.2.8.1(7) through (12). Proceed to Step 12.				
<b>Step 12: Is the return subject to TEFRA procedures?</b> If so (or are not sure) contact a TEFRA reviewer or TEFRA manager and review all above items to the extent applicable to determine if the TEFRA statute is also expired and requires a Form 3999-T.				
<b>Step 13:</b> Follow all steps in IRM 25.6.1.13.2.8.2 and IRM 4.2.1.10 (and subsections thereafter) to notify the taxpayer of the expired statute accordingly.				
<b>Step 14:</b> Follow the steps in IRM 25.6.1.13.2.8.3 to close the case accordingly. Refer to IRM 25.6 for any other specialized items that may be applicable.				

## Exhibit 4.8.11-7 (03-29-2017)

### Civil Resolution Cover Memo to Field Examination - Optional Template

<b>MEMORANDUM FOR:</b>	<b>COMPLIANCE GROUP MANAGER</b>
	SBSE, Examination, Field Examination, {Field Area}
	and
	<b>COMPLIANCE TERRITORY MANAGER</b>
	SBSE, Examination, Field Examination, {Field Area}
<b>FROM:</b>	{Fraud coordinator Name}
	Technical Services Fraud coordinator, {TS POD}
	and
	{Manager Name}
	Technical Services Group Manager, {TS POD}
	SBSE, Examination, Field Examination, Technical Services, {TS Territory}
<b>SUBJECT:</b>	Information for Civil Resolution after the Criminal Investigation (including Restitution and Probation cases)
	Key Taxpayer: {TP name}
	TIN: {TIN}

### Summary of Taxpayer / Returns being assigned:

Name / TIN	MFT	Period	ASED	Grand Jury Y/N (Sec B)	Examination-Related COP Y/N (Sec C)	Assessable Restitution Y/N (Sec D)

IRS Criminal Investigation Division has completed their investigation of the above referenced case(s), and has provided Form 13308, *Criminal Investigation Closing Report*. The case has known tax non-compliance and indicators of fraud. The above returns are being assigned to your group for appropriate civil resolution. Please refer to the information below for guidance on closing these types of cases. Not all items will apply to all cases. If the chart above indicates Grand Jury, COP, and / or Restitution, please pay particular attention to those sections below.

**Exhibit 4.8.11-7 (Cont. 1) (03-29-2017)****Civil Resolution Cover Memo to Field Examination - Optional Template****Section A: General Case Information**

1. **Name and EGC of Cooperating RA** (if applicable): {Enter name and EGC}
2. **Results of Criminal Case:** {Comment on conviction / plea, charges, year(s)}. See the enclosed Judgement and other documents relating to the criminal investigation and prosecution. For more information regarding the criminal case, you may contact CI.  
-- Special Agent (SA): {enter SA full name and POD}  
Supervisory special Agent (SSA): {enter SSA full name and POD}
3. **Fraud Penalty Consideration:** Fraud penalties (as well as all other applicable penalties) **must** be considered in these cases. Be sure to read carefully the procedures in IRM 25.1.6.2 *Procedures*. Specifically paragraphs 9 and 10 which explain when written concurrence by Area Counsel is required. Refer also to the Fraud Handbook IRM 25.1, specifically IRM 25.1.2, IRM 25.1.6, and IRM 25.1.7. If the criminal conviction / plea includes IRC 7201 Evasion, the taxpayer is prohibited from raising an affirmative defense against fraud for those specific years/returns. This is called Collateral Estoppel. This means we generally do not need to develop the taxpayer's fraudulent intent for these specific years/returns, but we still must establish and support the amount of our civil tax deficiency and the portion which is attributable to fraud. See also 25.1.6.4.
4. **Applicability of fraud penalty on non-target spouse:** See IRM 25.1.6 and IRC 6663(c).
5. **Prior, Subsequent, and Related Returns:** Consider and document if examination is warranted on prior and subsequent years, and other related returns. See IRM 4.10.5 and IRM 25.1.6.2(9).
6. **Innocent Spouse Considerations:** See IRM 4.11.34 and IRM 25.15.
7. **Collectibility Considerations:** See IRM 4.20.2.2(5)(c). The scope will not be limited, due to collectibility considerations, if there are indications of fraud.
8. **Report Writing:** IRM 4.10.8, *Report Writing*. The examination report should be prepared following normal examination preparation guidelines.
9. **ERCS Codes:** After you receive the case, be sure to update to the appropriate ERCS suspense type for tracking purposes.  
Suspense Type 220 - Civil Settlement from Technical Services (No Examination-related COP)  
Suspense Type 221 - Probation Cases  
Suspense Type 222 - Fraud Development (towards a new criminal referral)
10. **Follow normal procedures:** All other "normal" IRM policies and procedures still apply to these cases, and you are required to follow all case closing requirements as applicable.
11. **Additional Assistance:**  
You should contact your area fraud technical advisor (FTA) for assistance with examination procedures and the civil fraud penalty development. They are your primary resource for guidance on working these civil resolution cases. You can find your assigned FTA at the following website: <http://sbaseservicewide.web.irs.gov/Fraud/ExamFraud/FTAContacts/default.aspx>  
Procedural and administrative concerns should be researched in the IRM, addressed by the group manager, and/or referred to the appropriate function (AIMS / ERCS, CCP, PSP, RGS, TS, etc.) for guidance.  
The Servicewide Fraud website is also a great source for finding guidance and contacts fraud related issues: <http://sbaseservicewide.web.irs.gov/Fraud/default.aspx>  
Additional procedural assistance is also available from your local Technical Services fraud coordinator: <http://mysbse.web.irs.gov/exam/tip/fraud/contacts/11888.aspx>
12. **Mandatory Case Closing to Technical Services:** This case will have one or more "freeze codes" which require it to be closed through Technical Services. Cases which were successfully prosecuted under Title 26 will have the AIMS Freeze Code "P", and / or include Examination-related COP. If the case includes restitution assessable under IRC 6201(a)(4) there will also be a Criminal Restitution (CR) Code 1.  
This case must close through your local servicing Technical Services office (unless otherwise instructed by your local Technical Services office), for removal of the AIMS Freeze Code P and update of the CR Code.



**Exhibit 4.8.11-7 (Cont. 2) (03-29-2017)**

**Civil Resolution Cover Memo to Field Examination - Optional Template**

**If the ASED is expiring within 180 days please contact the local Technical Services manager and Fraud coordinator via e-mail prior to transferring the case.**

Prior to closing the case to Technical Services, the Form 3198, **Special Handling Notice for Examination Case Processing**, should be completed to reflect the following under the “Forward to Technical Services - Update to Status 21” section of the Form 3198:

- Check the box for: “*Civil Disposition of Joint Investigation – AIMS Freeze Code P (includes Criminal Restitution)*”. See also IRM 4.8.11.6.5.1.
- If the case is going to Appeals, also check the boxes for: “*Unagreed to Appeals*” and “*w/Int'l Issue*”, as applicable.
- If the case needs a Statutory Notice of Deficiency, also check the box for: “*Unagreed for Statutory Notice*”.
- Be sure to also indicate any other applicable conditions on the Form 3198 just as you would in any case. All the normal requirements still apply.
- When transferring the case to Technical Services in Status Code 21 please also indicate in the comments section of the Form 3210 the type of closure and earliest ASED. For example: “Closed for SNOD with AIMS freeze code P, ASED 04/15/2016”, or “Closed agreed with AIMS freeze code P, ASED 10/15/2016”. This will help us to prioritize the case and help prevent any misrouting or delays.

**Section B: Procedures Specific to Grand Jury Cases (if applicable)**

If indicated as yes above, review IRM 25.1.5.4, *Unique Features*, and IRM 25.1.5.5, *Civil Case Resolution*.

1. According to Rule 6(e) of the Federal Rules of Criminal Procedure, no information obtained during the Grand Jury Investigation may be used in a subsequent civil proceeding. Please refer to IRM 25.1.5.5, *Civil Case Resolution*, regarding the use of “grand jury information” and the assignment of the civil case in these circumstances. Refer also to IRM Exhibit 9.5.2-1 *Grand Jury Guidelines* and Chief Counsel memo **Using pre-existing documents subpoenaed by a grand jury under Federal Rule of Criminal Procedure 6(e)** (available on the SB/SE Counsel website) which summarizes the precedents for “matters before the grand jury” in each circuit for more information regarding what is and is not generally considered “grand jury information”.  
Prosecution of this case resulted from a grand jury investigation, as such this case cannot be assigned to examiners or managers “tainted” by grand jury information. Per the Form 13308 a cooperating examiner was assigned to the grand jury investigation, and therefore the cooperating RA (and their manager and other group members) are generally considered “tainted” and therefore prohibited from working the civil resolution of the case due to involvement during the Grand Jury Investigation:
  - Examiner: {enter GJ RA full name and POD}
  - Manager: {enter manager full name and POD}
  - Group Number: {enter PBC SBC EGC}
 Please contact the SA and/or SSA for confirmation of “taint” issues and for more information on what evidence the Examination Division may or may not use in a civil proceeding. It is advisable to include the FTA in these discussions.

**Section C: Procedures Specific to Cases with Examination-Related Conditions of Probation (COP)**

If indicated above that the case includes Examination-related COP, then pay special attention to this section. Refer also to IRM 25.1.4.5 and IRM 4.8.11.6 and subsections thereunder. Per Form 13308 the probation term tentatively expires on {enter date}.

1. The Examination-Related COP ordered per the Judgment include:
  - The defendant shall {insert examination-related COP}
  - The defendant shall {insert examination-related COP}

**Exhibit 4.8.11-7 (Cont. 3) (03-29-2017)****Civil Resolution Cover Memo to Field Examination - Optional Template**

2. The Collection-Related COP ordered per the Judgment include:
  - The defendant shall {insert examination-related COP}
  - The defendant shall {insert examination-related COP}
3. **Field Examination responsibilities for monitoring cases involving conditions of probation** are outlined in IRM 25.1.4.5 and IRM 4.8.11.5.1.
4. **Cooperation as COP:** Generally, the conditions of probation relevant to the examination process will require the taxpayer to cooperate with the Service to determine the civil tax liability and the filing of delinquent and/or amended returns.

**Note:** *Cooperation to determine the taxes due is not the same as agreeing with your examination results. The taxpayer always has the right to disagree with your proposed adjustments. To put it another way, not agreeing to your RAR does not equal non-compliance.*

5. **COP Compliance Memo:** Both the Examination and Collection functions are responsible for notifying CI of the taxpayer's noncompliance with the tax-related terms of probation. The notifications to CI should be made at the following times:
  - Immediately when it is identified that the taxpayer is not in compliance and/or the taxpayer takes affirmative actions to avoid/refuse compliance with the COP (IRM 25.1.4.5(6)(b)), AND
  - At the earlier of 180 days before probation expires, or the civil examination is closed (IRM 25.1.4.5(6)(a)).

The Field Examination territory manager is responsible for notifying CI of the taxpayer's level of compliance with the Examination-related COP, and for requesting follow-up action by CI through the Probation Office / Courts to enforce the conditions of probation, as appropriate. IRM 25.1.4.5.

In cases in which enforcement action by CI and / or Probation Office is requested, Field Examination is responsible for following up with CI regarding actions to enforce compliance. Consultation with a Fraud Technical Advisor should be utilized by Field Examination, as appropriate, to decide upon and facilitate the most appropriate course of action. In cases in which CI requests enforcement action through the Probation Office / Courts, the Examiner should ask CI to provide executed copies of documents submitted by Probation to the Court for the civil case file.

**Note:** It is often helpful to include Collection Advisory in these discussions to cover both the Examination and Collection side together.

A sample template of the Field Examination memo to the SAC is provided as IRM Exhibit 4.8.11-10. *You are not required to use this template, but it is provided as an easy starting point for you.*

**Note:** When reporting to CI regarding the taxpayer's compliance with the terms of probation, the Field Examination territory manager is required to send a copy of the report/request for CI action to the appropriate local Examination Technical Services office and to Collection at \*SBSE EEF Dallas Resitution.

6. **Form 13308, Criminal Investigation Closing Report:** Please note that the Form 13308 changes frequently and so the line numbering may change depending on which revision CI sends for each case. In addition to the COP Compliance memo (above) you are responsible for responding back to CI on Form 13308 for COP cases. You are required to complete the "Field Examination" items (currently Part B, Section X, lines i, j, and k) on the enclosed Form 13308 and send via secure e-mail to the CI field office conditions of probation coordinator and also to the Technical Services fraud coordinator, as indicated below.
  - CI COP coordinator per Form 13308: {enter name per Form 13308}
  - TS fraud coordinator: {enter your name or mailbox}
 Line "i" should be completed and forwarded upon assignment to the examiner.  
 Lines "j" and "k" must be completed accordingly when you are ready to close your case.
7. **Disclosure to the Probation Officer:** Generally Examination submits probation information to CI, and CI handles the disclosures to the US Probation Office accordingly. However, the assigned Probation Officer may reach out to the assigned RA / manager directly to confirm the taxpayer's com-

**Exhibit 4.8.11-7 (Cont. 4) (03-29-2017)**

**Civil Resolution Cover Memo to Field Examination - Optional Template**

pliance with the tax-related COP. In general, if the plea / conviction is for tax or tax-related charges (Title 26, and certain Title 18 and 31) then disclosure of specific tax information regarding the specific years / returns / types of tax included in the successfully prosecuted charge(s) and / or as listed in the conditions of probation / supervision are allowed. Be careful with issues outside of the successful prosecution (a common example is when some of the tax charges / years are dropped pursuant to the plea agreement).

Refer to Publication 4799 *Common Questions and Answers Regarding Interactions Between the U.S. Probation Office and the Internal Revenue Service in Supervision Cases*, (specifically Q&A #8 and #13), for a good overview of the type and manner of disclosures between the IRS to the US Probation Office. IRM 11.3.22.18.2 *Probation Proceedings*, and IRM 5.1.5.22 *Disclosure of Return Information to the Probation Officer*, also provide important information specific to this process. When looking at IRM 5.1.5.22, simply substitute the titles “Revenue Agent” or “Examiner” for “Advisor” and / or “Revenue Officer”.

**When in doubt, secure Form 8821, Tax Information Authorization, and / or consult the Disclosure Office before disclosing.** It is extremely common for the conditions of probation in the Judgment to require the taxpayer to submit authorizations to disclose tax and other financial information to the probation officer, and often specifically lists Form 8821. Check CFINK and if it is not already in the system secure a copy from the probation officer. Be sure to submit to the appropriate CAF unit for processing. Then proceed following all normal disclosure rules accordingly.

**Section D: Procedures Specific to Cases with Criminal Restitution and Restitution-Based Assessments (RBA)**

If indicated above that the case includes assessable/assessed criminal restitution then pay special attention to this section.

1. **Restitution Guidance from the Area SEP SME:** This case includes criminal restitution payable to the IRS and CI has determined that it is assessable under IRC 6201(a)(4). Prior to taking any civil case action please closely review all enclosed information from Technical Services, PSP, and your Area SEP Restitution SME. If there is no prior information provided by your Area SEP Restitution SME, you must contact them for further guidance prior to taking any substantial civil actions. For SBSE {Field Area} Examination the SEP Restitution SMEs are currently:  
 -- {SEP Restitution SME Name and POD}, and  
 -- {SEP Restitution SME Name and POD}.
2. **Report Writing:** There should be no reference in the examination report to the restitution ordered or the restitution-based assessment(s).

**Note:** If the restitution-based assessments are greater than the total proposed civil assessments for the same years reflected on the examination report (tax + penalties, in aggregate), contact **must** be made with your Area’s SEP Restitution SME for guidance on how to proceed. *We generally do not want to issue an RAR when the total corrected civil tax and penalties are less than the total restitution assessments.*

3. **Form 14104, Notification of Court Ordered Criminal Restitution Payable to IRS, and Judgment in a Criminal Case:** The total restitution on the Form 14104 should equal the restitution ordered payable to the Service on the Judgment. Technical Services will generally already have the restitution-based assessment (RBA) posted before it is assigned to you. The RBA as shown on line 14 of the Form 14104 is generally posted on MFT 31 under the taxpayer/defendant’s SSN. If the restitution assessment is not yet posted, or appears to be incorrectly posted, please contact your local TS fraud coordinator. No further actions by Examination are required regarding the restitution-based assessment. Follow all normal report writing procedures for your RAR.

**Note:** The assessed restitution may have no particular bearing on the civil examination. While the criminal RBA and civil examination assessments are typically based on the same adjustments to tax, they are separate and distinct liabilities, and should not be confused with each other.

**Exhibit 4.8.11-7 (Cont. 5) (03-29-2017)****Civil Resolution Cover Memo to Field Examination - Optional Template**

4. **Field Examination's Responsibilities for RBA:** In general, Field Examination has no direct responsibilities regarding the assessment of criminal restitution. You will be working the civil examination assessments, not the criminal restitution assessments. **At no time should you attempt to adjust a restitution-based assessment, or to adjust the allocation of payments which are already posted.** Doing so may cause significant problems for both the Service and the taxpayer. If you identify any potential errors you should refer it to your local TS fraud coordinator.
5. **General Questions on Restitution-Based Assessment Procedures:** As stated above, Field Examination is not responsible for (and has no permissions for) posting or adjusting the RBA, or generally for application of payments to the RBA. If for some reason you need information regarding the specifics of the RBA process, you should refer to IRM 25.26 *Restitution*, and discuss it with the Area SEP Restitution SME and/or the TS fraud coordinator.

## Exhibit 4.8.11-8 (03-29-2017)

### Civil Resolution Cover Memo to PSP - Template

<b>MEMORANDUM FOR:</b>	<b>PSP RETURNS CLASSIFICATION SPECIALIST</b>
	SBSE, Examination, Field, {Field Area}, Planning & Special Programs
<b>FROM:</b>	{TS Group manager Name}
	Technical Services Group Manager
	SBSE, Examination, Field, Technical Services Territory {TS Territory, POD City, State}
<b>SUBJECT:</b>	<b>Criminal Case Referral for Civil Resolution</b> (including Post-Prosecution, Probation and / or Restitution)
	Taxpayer (key): {TP name}
	TIN: {TIN}

### Summary of Taxpayers / Returns being referred for assignment:

Name / TIN (if other than primary shown above)	MFT	Period	ASED (MF / AIMS)	Successfully Prosecuted for Title 26? Y/N	Examination-Related COP? Y/N	Assessable Restitution? Y/N	Grand Jury? Y/N

Criminal Investigation Division (CI) has closed their investigation of the above referenced case(s). Technical Services (TS) has reviewed the information provided by CI and has determined that a civil examination may be warranted because there are indicators of fraud and tax non-compliance. The information is being referred to Field Examination, via Planning and Special Programs (PSP), for appropriate civil resolution. Please review the information and assign the case(s) to an appropriate Field Examination group for the civil resolution. If you have any questions or concerns please contact the TS group manager listed above, or the local TS fraud coordinator. CI and / or TS have included the following information in this referral package (may not be all inclusive):

**Exhibit 4.8.11-8 (Cont. 1) (03-29-2017)****Civil Resolution Cover Memo to PSP - Template**

<input type="checkbox"/> Civil Resolution "cover memo" to Field Examination (IRM 4.8.11.4.7)	<input type="checkbox"/> Indictment / Information
<input type="checkbox"/> Form 13308, <i>Criminal Investigation Closing Report</i>	<input type="checkbox"/> Other Court documents
<input type="checkbox"/> Form 14104, <i>Notification of Court Ordered Criminal Restitution Payable to IRS</i>	<input type="checkbox"/> Special Agent Report
<input type="checkbox"/> Judgment in a Criminal Case	<input type="checkbox"/> Other information from CI
<input type="checkbox"/> Plea Agreement	<input type="checkbox"/> Discontinued Report / DOJ Declination
<input type="checkbox"/> Tax Returns: Copies / Originals (circle one)	<input type="checkbox"/> Examination case files from TS Suspense

**PSP Actions:**

- Review the case and complete appropriate case building.

**Note:** If PSP determines that the case will not be assigned for examination PSP must notify Technical Services of the determination. If the case includes tax-related conditions of probation (COP), PSP is responsible for completing the applicable sections of Form 13308 (section X, Field Examination, line items i, j, k). This includes the PSP TM responding to CI regarding the TP's level of compliance with the COP. IRM 25.1.4.5.

**Caution:** If the taxpayer was successfully prosecuted under Title 26 and PSP determines to not assign the case for examination, PSP is responsible for securing written concurrence from Area Counsel for non-assertion/not pursuing fraud penalties. IRM 25.1.6.2(9).

- Establish AIMS and ERCS controls accordingly.
- Input AIMS Freeze Code "P", *Civil Dispositions*, when either of the following conditions exist:
  - Successful prosecution of Title 26 charges
  - Examination-related conditions of probation (COP)
- Input appropriate project codes:
  - Criminal restitution under IRC 6201(a)(4): 1168
  - COP without restitution and no existing project code: 0017
  - Other appropriate project code as determined by PSP, if the above do not apply or are superseded by other guidance.
- Input appropriate tracking codes:
  - Criminal restitution under IRC 6201(a)(4): 6568
  - Other appropriate tracking code as determined by PSP, if the above do not apply or are superseded by other guidance.
- Input appropriate aging reason code:
  - Conditions of probation (Administrative & Grand Jury): 16
  - Administrative case returned for civil disposition, without COP: 17
  - Grand Jury case returned for civil disposition, without COP: 18
  - Other appropriate aging reason code as determined by PSP, if the above do not apply or are superseded by other guidance.
- Assign to appropriate Examination group as determined by PSP.
  - Cases with criminal restitution under IRC 6201(a)(4) must be assigned first to the area SEP GS-14 "Restitution SME" for review of examination potential and additional classification.
  - Notify Technical Services where the case has been assigned.
- Include all items provided by CI and / or TS when transferring case to Field Examination. Provide any additional instructions as determined appropriate by PSP.

**Exhibit 4.8.11-8 (Cont. 2) (03-29-2017)****Civil Resolution Cover Memo to PSP - Template**

- If the case needs to be transferred to another Examination Area, follow your normal PSP procedures for transferring cases. Notify Technical Services when you transfer the case.

For additional information refer also the IRM 4.1 *Planning and Special Programs*. Specifically IRM 4.1.1.7 *Program Coordination*, IRM 4.1.4.3.19 *Transfers from Technical Services*, IRM 4.1.5.2 *Case Building Overview*, IRM 4.1.10 *Return Preparer Program Coordinator*, and subsections thereunder. Refer also to the Technical Services' IRM 4.8.11.4.9. Additional information for fraud cases may be found in IRM 25.1 *Fraud Handbook*



**Exhibit 4.8.11-9 (03-29-2017)****COP Case Transferred to Appeals Memo - Template**

<b>MEMORANDUM FOR:</b>	<b>Appeals Tax Policy &amp; Procedure</b>
	Local CID Conditions of Probation Coordinator
	SBSE Collection Advisory (Dallas COP / Restitution)
<b>FROM:</b>	{TS coordinator Name}, Technical Services
<b>SUBJECT:</b>	Conditions of Probation Case Transferred to Appeals

The following case has tax-related conditions of probation and is being released from SBSE Examination Technical Services to the Office of Appeals.

Name of Taxpayer:

SSN / TIN:

MFT:

Years:

Upon conclusion of Appeals activity and assessment, please notify CID (Bryant.Jackson@ci.irs.gov), SBSE Collection Advisory (\*SBSE EEF Dallas Restitution), and Technical Services (\*SBSE TECH Svs Criminal Restitution) via secure e-mail of the final results of the civil case.

Please remember to keep in mind the requirements of IRM 8.11.1.2.6, IRM 8.17.4.31, and IRM 25.1.6.2.

If you have any questions, I can be contacted at {TS coordinator phone number}.

## Exhibit 4.8.11-10 (03-29-2017)

### COP Compliance Memo to CI - Optional Template

<b>MEMORANDUM FOR:</b>	<b>{name SPECIAL AGENT IN CHARGE}</b>
	Special Agent in Charge
	{City} Field Office
	Criminal Investigation Division
<b>FROM:</b>	<b>{COMPLIANCE TERRITORY MANAGER}</b>
	Territory Manager
	SBSE, {Field Area} Area
<b>THRU:</b>	<b>{GROUP MANAGER'S NAME}</b>
	Group Manager
	SBSE, Examination
<b>SUBJECT:</b>	Notification of Conditions of Probation Compliance (180 Day Memo)
	{Taxpayer's name and SSN}

The purpose of this memorandum is to report on the taxpayer's compliance with the Service-related conditions of probation contained in the sentencing documents. The taxpayer was convicted of or pled guilty to \_\_\_\_\_. Per the special conditions of supervision as detailed in the Judgment and Commitment Order, the Service-related conditions of probation are to expire \_\_\_\_\_.

The taxpayer {has / has not} met the terms of their conditions of probation. {Delete the following if COP terms met} The taxpayer did not meet the terms {by not / because} \_\_\_\_\_.

We anticipate that the taxpayers' probation officer will be provided a copy of this information by CI under proper disclosure procedures.

If you require any additional information, please contact Group Manager, {enter GM name} at XXX-XXX-XXXX or Revenue Agent, {enter RA name} at XXX-XXX-XXXX.

cc: {name of TS fraud coordinator}, SBSE Technical Services Reviewer

cc: {name of Advisory Liaison}, SBSE Advisory Reviewer

**Exhibit 4.8.11-11 (03-29-2017)****Civil Resolution Procedures Brief Overview Job Aid**

Any and all actions completed by the suspense clerk, fraud coordinator and / or management must be documented on the case file's activity record.

	Yes	No	N/A	Date Completed
<p><b>Civil Resolution Procedures Overview - IRM 4.8.11.5</b></p> <p>The following <b><i>briefly</i></b> summarizes the civil resolution (or civil disposition) procedures. Review the entire IRM(s) and other guidance available on the TS Fraud SharePoint site for more detailed information, specifically as it regards to cases with Restitution and COP.</p> <p>Upon receipt of Form 13308, <i>Criminal Investigation Closing Report</i>, from CI complete the following:</p> <ul style="list-style-type: none"> <li>• Check AIMS / ERCS, if case file in suspense then, retrieve case file from suspense.</li> <li>• If the TC 914 has not been released, coordinate with CI to have it released. (CI completes Form 4135 to release the Z freeze.)</li> <li>• Collateral records will be established to monitor and control cases with assessment-related conditions of probation (COP) or supervised release. A collateral record will be established only on the initial year of the case. See COP collateral instructions on the TS SharePoint site.</li> <li>• Review statutes and update as appropriate. e.g. – “CC” statutes are no longer applicable once CI submits Form 13308 to Technical Services. Either a live statute or “OO” statute is appropriate. Refer to IRM 4.8.11.3.5.3.</li> <li>• If necessary, Technical Services is responsible for securing a statute extension, securing Technical Services territory manager approval to allow the statute to expire, or having a statutory notice of deficiency issued as appropriate on imminent statute tax years.</li> <li>• If civil action is warranted, the fraud coordinator will prepare a memorandum containing specific instructions for civil resolution of the case to the appropriate examination group if previously controlled on AIMS.</li> <li>• If case not previously controlled, prepare civil resolution memo and route to PSP to be established and assigned.</li> <li>• If case involves conditions of probation / supervised release, see IRM 4.8.11.6 for additional monitoring required by Technical Services.</li> </ul> <p><b>Restitution:</b> The Firearms Excise Tax Improvement Act (Public Law 111-237), was enacted August 16, 2010, and allows the IRS to assess restitution amounts ordered payable to the IRS in a criminal case, as if it were a tax. This was codified into IRC 6201(a)(4). Assessable restitution will generally be assessed on a taxpayer's MFT 31 account. See IRM 25.26.1 and IRM 4.8.6, and guidance on TS Fraud SharePoint.</p>				