



MANUAL TRANSMITTAL

Department of the Treasury
Internal Revenue Service

4.16.1

APRIL 6, 2023

EFFECTIVE DATE

(04-06-2023)

PURPOSE

- (1) This transmits revised IRM 4.16.1, Special Enforcement Program (SEP), SEP Responsibilities and Case Development.

MATERIAL CHANGES

- (1) Significant changes to this manual are listed below:

Prior Reference	New Reference	Description of Change
Audience	Audience	<ul style="list-style-type: none">Changed from itemized list to a consolidated description. This will ease the transition of a future reorganization while not changing the content itself.
IRM 4.16.1.1, Overview	IRM 4.16.1.1, Program Scope and Objectives	<ul style="list-style-type: none">Has been re-purposed to align with IRM 1.11.2.2.5, Address Management and Internal Controls requirements.Content previously found in IRM 4.16.1.1, Overview, was moved to IRM 4.16.1.1.1, Background.Content previously found in IRM 4.16.1.11.2, Definitions, was moved to IRM 4.16.1.1.7, Terms.
IRM 4.16.1.4, Introduction	IRM 4.16.1.2.1, SEP Agent Duties and Responsibilities	<ul style="list-style-type: none">Content moved to IRM 4.16.1.2.1, SEP Agent Duties and Responsibilities and IRM 4.16.1.2, SEP Objectives.Changed title of section from SEP Agents Defined to SEP Agent Duties and Responsibilities as there was duplication with IRM 4.16.1.3. Deleted duplication in IRM 4.16.1.3.
N/A	IRM 4.16.1.2, SEP Objectives	<ul style="list-style-type: none">New section to provide guidance on objectives and definitions.
IRM 4.16.1.5, SEP Agent Duties and Responsibilities	IRM 4.16.1.3, Elements of a SEP Case.	<ul style="list-style-type: none">Under IRM 4.16.1.5 the SEP agents duties and responsibilities were a duplication of IRM 4.16.1.2.1, the duplications were removed and the section was renamed.
IRM 4.16.1.3, SEP Position Descriptions /Measurements		<ul style="list-style-type: none">Added SEP Position Descriptions and Measures.

Prior Reference	New Reference	Description of Change
IRM 4.16.1.4, Sources and Development of SEP Cases	IRM 4.16.1.4, Sources and Development of SEP Cases	<ul style="list-style-type: none"> Overview was moved elsewhere.
IRM 4.16.1.5, AIMS	IRM 4.16.1.5, AIMS Codes for SEP	<ul style="list-style-type: none"> Formatting changes for better readability. Updated codes.
IRM 4.16.1.6, Illegal Source Income	N/A	<ul style="list-style-type: none"> Content previously found in IRM 4.16.1.6, Illegal Source of Income, is now found in IRM 4.16.1.1.1, Background. Moved content to IRM 4.16.1.1.7, Terms.
IRM 4.16.1.3.7 (7), Grand Jury Investigations		Content was added to ensure RARs are prepared for computational purposes only in a grand jury investigation.
IRM 4.16.1.3.7(8), Grand Jury Investigations		Content was added to identify appropriate IDRS access during criminal investigations.
IRM 4.16.1.8.1, Fraud Development		Added the Fraud Development content to provide guidance when working with an FEA.

- (2) Minor editorial changes were made throughout this IRM. Website addresses, form references and IRM references were reviewed and updated as necessary. Replaced Service with IRS throughout per SPDER guidance. Changed fictitious names and social security numbers to meet the requirements of Document 13324, Guidelines and Examples for Fictionalizing Domestic Taxpayer Information. Formatting and order have been changed to improve flow and readability and to remove duplications. Changed fraud technical advisors to fraud enforcement advisors.

EFFECT ON OTHER DOCUMENTS

This material supersedes IRM 4.16.1 dated June 13, 2017.

AUDIENCE

All compliance employees.

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4.16.1

SEP Responsibilities and Case Development

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4.16.1.1
(04-06-2023)
Program Scope and Objectives

- (1) *Purpose*- This IRM section provides an overview and outlines the purpose and goals of the Special Enforcement Program (SEP).
- (2) *Audience*- These procedures apply to all compliance employees.
- (3) *Policy Owner*- The Director, Examination Field and Campus Policy, which is under the Director, Examination Headquarters .
- (4) *IRM Owner*- Field Examination Special Processes, which is under the Director, Examination Field and Campus Policy.
- (5) *Primary Stakeholders*- SB/SE is the primary stakeholder of the Special Enforcement Program.
- (6) *Contact Information*- To recommend changes or make any other suggestions related to this IRM section, see IRM 1.11.6.5, Providing Feedback About an IRM Section - Outside of Clearance.

4.16.1.1.1
(04-06-2023)
Background

- (1) SEP is a specialized compliance program within the Small Business/Self-Employed Operating Division (SB/SE) directed toward that segment of the population which derives substantial income from either legal or illegal activities and intentionally understate their tax liability.
- (2) SEP evolved from a "Strike Force" Program focused on organized crime and illegal activity into a Compliance Program with emphasis on identifying, developing, and investigating fraudulent income and expense issues of both legal and illegal entities.
- (3) SEP cases normally involve in-depth income examinations. IRC 7602(e), Limitation on Examination on Unreported Income, states that the IRS is not to use financial status or economic reality examination techniques, such as indirect methods, to determine the unreported income of any taxpayer unless there is a reasonable indication that there is a likelihood of such unreported income.
- (4) The examination of income is a mandatory audit issue for SEP cases. The depth of the examination of income and the types of investigative techniques used are dependent on the facts and circumstances of the case. To determine whether unreported income exists, the SEP agent should:
 - Conduct the minimum income probes;
 - Resolve large, unusual and questionable (LUQ) income items;
 - Perform a financial status analysis; and
 - Evaluate internal controls in the case of a business return.

If the likelihood of unreported income has been established, the use of Financial Status Audit Techniques (FSAT) would be appropriate and are not prohibited by IRC 7602(e).

- (5) If the SEP agent has established that there is a reasonable likelihood of unreported income, a more in-depth examination of income is warranted. Any technique or procedure used to determine the amount of unreported income could be labeled a FSAT. A FSAT is, therefore, defined by its purpose which is a technique, analysis or procedure used to determine the specific amount of unreported income. See IRM 4.10.4.5.2, In-Depth Examinations of Income: Individual Taxpayer.

- (6) In some instances, the SEP agent may have reasonable indications that the likelihood of unreported income exists prior to the start of the actual examination. Examples of such sources could include: Information from informants/whistleblowers; Criminal Investigation (CI); federal, state or local law enforcement; or Information Reporting Program (IRP).
- (7) The SEP agent should document in workpapers the sources of information/evidence secured, the analysis of the information/evidence and the conclusions. Dates those events and actions occurred should also be documented. This step should always take place regardless of the methods used or the information made available to reach the determination that the likelihood of unreported income exists.

4.16.1.1.2
(04-06-2023)
Authority

- (1) Authority -
 - IRC 7602, Examination of Books and Witnesses, is the primary internal revenue code used to conduct audits.
 - IRC 61, Gross Income Defined, is the primary internal revenue code to define sources of income.
 - IRC 446, General Rule for Methods of Accounting, allows the reconstruction of income if the method used by the taxpayer does not clearly reflect income.

4.16.1.1.3
(04-06-2023)
Roles and Responsibilities

- (1) The Director, Examination Headquarters, is the executive responsible for providing policy and guidance for Field employees and ensuring consistent application of policy, procedures, and tax law to effect tax administration while protecting taxpayers' rights.
- (2) The Director, Examination Field and Campus Policy, reports to the Director, Examination Headquarters, and is responsible for the delivery of policy and guidance that impacts the Field examination process.
- (3) Field Examination Special Processes, which is under the Director, Examination - Field and Campus Policy, is the group responsible for providing oversight and policy and procedural guidance on specialized examination processes to SB/SE Field examiners and group managers.
- (4) Revenue agents in SEP are financial investigative specialists and forensic accountants. In addition to general tax law knowledge and auditing skills, SEP agents are experts in the identification and development of cases with fraud potential.
- (5) SEP group managers are responsible for completion of the SEP Cooperating Agent and Trial Summary Report, (SCATS). The SCATS report captures non-ERCS inventory resulting from the SEP agent's assistance to CI. SCATS also captures the status of grand jury and administrative cases.

4.16.1.1.4
(04-06-2023)
Program Management and Review

- (1) Periodic program reviews are conducted to:
 - Assess the effectiveness of specific programs within Examination or across the organization,
 - Determine if procedures are followed,
 - Validate policies and procedures, and
 - Identify and share best/proven practices.

4.16.1.1.5

(04-06-2023)

Related Resources

- (1) The following table contains related manuals which cover additional processes and procedures that examiners may use and are referenced throughout this manual.

Resource	Title
Federal Rules of Evidence (FRE)	These rules are referenced in this manual. Bloomberg requires a subscription to access this information. Westlaw may be utilized to find these sources.
Knowledge Management	<i>Fraud Development Knowledge Base</i>

4.16.1.1.6

(04-06-2023)

Acronyms

- (1) The following table lists common acronyms and their definitions as used throughout this IRM.

Acronym	Definition
ARC	Aging Reason Code
BC	Brookhaven Campus
CI	Criminal Investigation
CIP	Compliance Initiative Projects
CTR	Currency Transaction Report
FEA	Fraud Enforcement Advisor
FRE	Federal Rules of Evidence
FSAT	Financial Status Audit Technique
IDRS	Integrated Data Retrieval System
IRP	Information Reporting Program
PSP	Planning and Special Programs
LUQ	Large, Unusual and Questionable
RAR	Revenue Agent Report
SA	Special Agent
SAC	Special Agent in Charge
SAR	Special Agent Report
SAR	Suspicious Activity Report
SCATS	SEP Cooperating Agent and Trial Summary
SEGIR	SEP ERCS Group Inventory Report
SEP	Special Enforcement Program
SEPTUR	SEP Time Usage Report

Acronym	Definition
SME	Subject Matter Expert
TECS	Treasury Enforcement Communication System

4.16.1.1.7
(04-06-2023)

- (1) The following table contains terms and definitions as applied throughout this IRM:

Terms

Term	Definition
IRS Racketeer	A taxpayer identified as being engaged in organized crime activities; notorious or powerful with respect to local criminal activities; receiving substantial income from illegal activities as a principal, a major subordinate, or an important aider, or abettor; or infiltrating legitimate businesses through illegal means or through loaning or investing therein the proceeds from illegal activities.
Wagering	Taxpayers engaged in an occupation requiring registration or one who is engaged in receiving wagers.
Illegal Income Recipient	Illegal Income—Includes any person who is reasonably believed to be receiving substantial income from an illegal activity that is separate and apart from the alleged tax violations, such as corruption in government, welfare fraud, bribery, embezzlement or Ponzi investment schemes.

4.16.1.2
(04-06-2023)
SEP Objectives

- (1) Perform timely and effectively planned and managed examinations of returns filed or non-filed, notwithstanding obstacles created by complexity, diversification, scarcity of audit records and evidence, difficulty in securing records and testimony or geographic dispersion of operations.
- (2) Accumulate at the Headquarters' level and disseminate novel examination techniques, issues unique to legal or illegal income sources, avoidance and evasion schemes, and all other information useful in planning and executing examinations.
- (3) Encourage and promote communications and exchange of techniques and procedures between compliance officers as an aid in achieving the most effective in-depth examination.

4.16.1.2.1
(04-06-2023)
SEP Agent Duties and Responsibilities

- (1) The core roles and responsibilities of SEP agents include but are not limited to the following:

- a. Recognize, identify and develop issues with significant fraud potential through the examination of complex financial transactions.
 - b. Submit fraud referrals to CI on cases meeting criminal criteria.
 - c. Assist in financial investigations of taxpayers who derive legal and illegal income, but choose to evade their tax liability through one or more violations of the tax law.
 - d. Serve as the cooperating agent in administrative and grand jury investigations.
 - e. Assist U.S. Attorney's office in computing the criminal tax liability, relevant conduct tax loss, restitution and preparation of plea agreements.
 - f. Assist Counsel in preparing schedules and tax computations for judicial purposes. Testify as an expert or summary witness in civil tax trials.
 - g. Provide trial assistance, including the preparation of trial exhibits as an expert or summary witness in criminal prosecutions.
 - h. Assist criminal investigation in conducting detailed interviews of taxpayers and third-party witnesses.
 - i. Preparation, use and enforcement of summonses to determine taxable income. See IRM 25.5, Summons.
 - j. Act as technical advisor and assist the U.S. Attorney's office with grand jury investigations.
 - k. Balance civil and criminal aspects in joint investigation cases, including the protection of the statute of limitations.
 - l. Ensure the civil disposition of closed criminal prosecutions by preparing examination reports, compute tax liability and applicable civil penalties.
 - m. Develop leads by networking with local, state and federal agencies.
- (2) SEP agents who serve as the Subject Matter Experts (SME) are resource persons for SB/SE Examination and other IRS functions in the following areas:
- a. Indirect methods of reconstructing income.
 - b. Novel examination and interview techniques unique to income tax examinations and tax evasion schemes.
 - c. Summons preparation, use and enforcement. See IRM 25.5, Summons.
 - d. Civil fraud penalty development and application, IRC 6663, Imposition of Fraud Penalty and IRC 6651(f), Increase in Penalty for Fraudulent Failure to file. See IRM 25.1.6, Civil Fraud, and IRM 20.1, Penalty Handbook.
 - e. Jeopardy and/or termination assessments to protect the Government's interest. See IRM 4.15.1, Jeopardy and Terminations.
 - f. Expert witness and trial preparation.
 - g. Provision of face-to-face and virtual learning on specialized topics such as grand jury investigations, joint investigations, auditing income, and investigative techniques.

4.16.1.3

(04-06-2023)

Elements of a SEP Case

- (1) Elements of SEP cases include, but are not limited to:
- a. Unreported income
 - b. False expenses/credits
 - c. Embezzlement and theft
 - d. Currency violations (FinCEN/SAR)
 - e. Political corruption
 - f. Bank and credit card Fraud
 - g. Frivolous filers/non-filers
 - h. Abusive trusts/abusive trust schemes
 - i. Tax shelters
 - j. Abusive return preparers

- k. Fraudulent specialty tax investigations (for example, Employment Tax and/or Excise Tax Investigations)
- l. Emerging Issues
- m. Offshore activities
- n. Health care fraud
- o. Racketeering/organized crime
- p. Narcotics trafficking
- q. Illegal gambling operations
- r. Prostitution
- s. Pornography
- t. Internet fraud
- u. Compliance Initiative Projects (CIP)
- v. Whistleblower Claims
- w. Promoter Investigations
- x. Voluntary Disclosure Program
- y. Identity Theft
- z. Digital Assets

4.16.1.3.1
(04-06-2023)
**SEP Position
Descriptions/
Measurements**

- (1) SEP group manager and SEP agent position descriptions are as follows:
 - PD 99064 - SB/SE SEP Group Manager
 - PD 99065 - SB/SE SEP Group Manager (High Risk Critical Sensitive Designation)
 - PD 94594 - SB/SE SEP Agent grade 12
 - PD 96572 - SB/SE SEP Agent grade 12/13
 - PD 94595 - SB/SE SEP Agent grade 13
 - PD 97875 - SB/SE SEP Agent grade 13 (High Risk Critical Sensitive Designation)
 - PD 97030 - SB/SE SEP Agent grade 14 (SME)
 - PD 97900 - SB/SE SEP Agent grade 14 (SME) (High Risk Critical Sensitive Designation)
- (2) Implementation of SEP measures will allow all levels of leadership to fully understand SEP's contributions to SB/SE Examination with transparency and increased accountability at the group level.
- (3) There are three new reports being implemented for data gathering and monitoring in SEP groups:
 - a. SEPTUR - SEP Time Usage Report,
 - b. SCATS - SEP Cooperating Agent and Trial Summary Report, and
 - c. SEGIR - SEP ERCS Group Inventory Report.
- (4) Differences between General Program and SEP create challenges when measuring the compliance efforts resulting from the uniqueness of SEP work. To allow for the development of complex and challenging examinations, in-process SE/SE SEP cases are considered overage when they have been in status 12 (started) in excess of 390 days. SEP managers should be actively involved in case actions, and SEP agents should be making timely actions for successful case management.

4.16.1.3.2
(06-14-2011)
SEP Interviews

- (1) An in-depth interview is one of the most important aspects of a SEP examination. Interviews are used to obtain leads, develop information and establish evidence. The testimony of witnesses and the admissions of alleged violators are major factors in resolving tax cases.

- (2) In an initial interview, the SEP agent should obtain as much information as possible to evaluate the taxpayer's complete financial situation, since this may be the only contact with the taxpayer.
- (3) SEP agents should interview the taxpayer and every pertinent witness connected with the case. See IRM 4.10.3.3.1, Who To Interview.
- (4) As additional information and facts are uncovered, follow-up interviews may be critical to issue development. The use of a Summons to secure testimony should be considered as appropriate.
- (5) Interviewing taxpayers in custody:
 - a. Before interviewing a taxpayer confined in prison, or otherwise detained by federal, state, or local authorities, the SEP agent will first evaluate the case for fraud potential.
 - b. If the case has no fraud potential, the SEP agent may conduct the interview without the assistance of a Special Agent (SA).
 - c. If the case has firm indications of criminal fraud, the SEP agent will refer the case to CI without interviewing the taxpayer in custody.
 - d. If the evaluation of fraud potential is not possible without interviewing the taxpayer in custody, the SEP agent will prepare a memorandum to the Special Agent in Charge (SAC), CI. This memorandum will request the assignment of an SA to assist in the interview and to inform the taxpayer in custody of their constitutional rights in accordance with the decision of *Miranda v. Arizona*, 86 S. Ct. 1602 (1966).
 - e. After the interview, the assigned SA may assist the SEP agent in evaluating any possible fraud implications. If firm indications of criminal fraud are not present, the SEP agent will continue to work the case.
 - f. It is not necessary for an SA to be present when interviewing a third party witness in custody.
- (6) The SEP agent must prepare a permanent record of every interview using one or more of the following:
 - a. Memorandum of interview
 - b. Transcript of interview or Question and Answer Statement
 - c. Affidavit or
 - d. Audio recording.
- (7) Interviews of Officials or employees of a federally recognized Indian tribe should be in accordance with protocols set forth by relevant Presidential Executive Orders. See IRM 5.1.12.24, Indian Tribal Governments.

4.16.1.3.2.1
(06-14-2011)
Securing Affidavits

- (1) One of the principal responsibilities of a SEP agent is to obtain early and accurate information.
- (2) SEP agents must initiate and proceed with in-depth examinations on the assumption that cases will result in litigation. It is, therefore, incumbent upon the SEP agent to obtain as much testimonial and documentary evidence as possible.
- (3) During the examination, the SEP agent may obtain oral testimony which may significantly affect the outcome of the case. The SEP agent should have the individual attest to the accuracy of their statements by preparing and signing an affidavit or statement.

- (4) The average individual is not familiar with the law; the SEP agent should advise them that preparing or giving a false statement is a criminal offense. An attested statement has greater validity when properly prepared and voluntarily given.
- (5) Affidavits and statements are used to:
 - a. Record the testimony of a witness;
 - b. Refresh the memory of a witness;
 - c. Deter a witness from becoming hostile and changing their testimony;
 - d. Impeach a hostile witness;
 - e. Be used as evidence; and/or
 - f. Help accumulate complete and accurate information.
- (6) SEP agents may use some of the following methods to record statements:
 - a. See IRM 9.4.5.7.1, Affidavit.
 - b. Narrative Affidavit—Primarily is used by SEP agents. Variations are accepted as long as the basic elements remain unchanged. If feasible, the subject should be requested to examine, make corrections and sign the document. If they refuse to sign, the following legend should be inserted at the end of the statement: "This statement was read by [subject's name] on [date], who stated that it is true and correct, but refused to sign it."
 - c. Summarized Narrative—A summary of a conversation or statement made by a taxpayer or witness who should be requested to examine, make corrections and sign the document. The SEP agents present at the interview should always sign the statement.
 - d. Question and Answer—The witness should attest to its accuracy.
 - e. Reports of Interview—A summary of an interview that is not signed by the taxpayer or witness, but attested to by the SEP agent.
- (7) The SEP agent may decide to administer an oath to the taxpayer and/or witness at the start of the interview. The authority to administer oaths and affirmations, whether pursuant to the issuance of a summons or a request for information, is in IRC 7602, Examination of Books and Witnesses, and IRC 7622, Authority to Administer Oaths and Certify. While CI may normally administer oaths on a regular basis, it is recommended SEP agents seek Area Counsel guidance prior to the creation of an oath to record statements. For additional information on oaths and the waiver of constitutional rights, see IRM 9.4.5.11.3.2.2, Waiver of Constitutional Rights, and related exhibits.

4.16.1.3.2.2
(06-13-2017)

**Electronic or Verbatim
Recording of Interviews**

- (1) Requests to make audio tape, audio disk, stenographic or other verbatim recordings of interviews will ordinarily be allowed except where the taxpayer or representative's behavior is disruptive.
- (2) Recording an interview of a taxpayer or witness should be considered when the SEP agent has concerns that testimony may later change. The IRS can record an interview of a taxpayer or witness. In instances where the IRS initiates the recording, the interview does not have to occur at an IRS office.
- (3) For comprehensive information on the recording of interviews, see IRM 4.10.3.3.6, Requests to Audio Record Interviews.

4.16.1.3.3
(06-14-2011)
Evidence

- (1) SEP examinations are unique because of the significant potential for fraud and litigation. Many SEP cases result in recommendations for criminal prosecution and an even greater number involve assertions of the civil fraud penalty.
- (2) The nature of SEP cases increases the likelihood that the burden of proof will rest with the government. SEP agents must gather the evidence necessary to sufficiently substantiate and prove the facts of the case.
- (3) SEP agents should be familiar with the Federal Rules of Evidence (FRE) particularly:
 - a. Best evidence rule (FRE 1001, Definitions That Apply to This Article through 1006, Summaries to prove content);
 - b. Hearsay rule and exceptions (FRE 801, Definitions That Apply to This Article; Exclusions from Hearsay through 806, Attacking and Supporting the Declarant); and
 - c. Attorney client and accountant client privilege rules (FRE 501, Privilege in General).
- (4) SEP agents should also be familiar with case law interpretations of evidential principles and the law of privileges, such as the attorney-client privilege and the practitioner privileges of IRC 7525, Confidentiality Privileges Relating to Taxpayer Communications. See IRM 5.17.6, Summonses.
- (5) When securing evidence, SEP agents must always be aware of the secrecy provisions of Rule 6 (e) of the Rules of Federal Criminal Procedure. SEP agents must always verify the information received was not grand jury information.

4.16.1.3.3.1
(06-14-2011)
Search Warrant Secured Evidence

- (1) SEP agents can utilize evidence secured by federal, state or local law enforcement agencies in securing leads and developing cases.
- (2) SEP agents should obtain a copy of the search warrant and/or inventory to document how the evidence was obtained.
- (3) Consult Area Counsel if there is a motion to suppress the search warrant or other technical problems with the search warrant evidence. In *U.S. v. Janis*, 76-2 USTC 16,299, 428 U.S. 433, 96 S. Ct. 3021, the IRS was allowed to use evidence for civil purposes that was suppressed from criminal usage by the local authorities.

4.16.1.3.3.2
(06-14-2011)
Electronic Communications Monitoring (Wire Tap) Evidence

- (1) Evidence developed from a court ordered electronic monitoring can be an important source of information in SEP cases. The evidence may support a computation of income for a period of time in cases such as wagering or narcotics, as well as links to assets, expenditures, associates of a taxpayer or other leads. Generally, the evidence will consist of tapes of actual telephone conversations, listing of telephone numbers called (Pen Register) and places from which calls were received (Trap and Trace).
- (2) Title 18 USC 2517, Authorization for Disclosure and Use of Intercepted Wire, Oral, or Electronic Communications, sets forth a statutory theme under which disclosure and use of intercepted oral and wire communications are permitted. Section 2517(1) permits law enforcement officers who obtain wiretap evidence to turn such evidence over to other law enforcement officers for the latter's use. Title 18 USC 2517(2) permits the receiving law enforcement officer to use

wiretap evidence in their official duties, such as issuing summonses; obtaining jeopardy assessments; investigating tax offenses or preparing a Special Agent's Report (SAR).

Caution: Title 18 USC 2515, Prohibition of Use as Evidence of Intercepted Wire or Oral Communications, prohibits the use of evidence derived from intercepted wire communications, if information is in violation of the law. Before receiving such evidence, SEP agents must obtain the subsequent court order releasing the evidence to the IRS for use in an income tax examination. Follow the procedures set forth below to preserve the IRS's right to use this evidence.

- (3) The SEP agent is responsible for initiating an application for disclosure. On a U.S. District Court approved case, the application should be made through Area Counsel to the U.S. Attorney's office. On a state court approved case, the application will be made through Area Counsel to either the District Attorney's office or the U.S. Attorney's office. When the order is obtained through the District Attorney's office, the final order should be forwarded to Area Counsel after receipt for its approval of the order.
- (4) Once approval of the court and/or Area Counsel is secured, the SEP agent will make arrangements for an SA to be assigned to accompany the SEP agent to secure the evidence. The SA will evaluate the criminal aspects of the evidence received. If none is found or prosecution is declined due to dual prosecution or other reasons, the SA will refer the evidence to the SEP agent for civil purposes.
- (5) Disclosure by the SEP agent should be limited to those named on the order. Title 18 USC 2517(3) allows disclosure of such evidence while giving testimony under oath in any proceeding held under the authority of the United States.
- (6) When closing an unagreed case, the electronic communications evidence must be removed from the case file and stored in a secured access storage area within an IRS office to prevent unauthorized disclosure. The workpapers should indicate that additional evidence is under the control of the SEP agent and would be available for litigation. In an unagreed case, the evidence should be held in the secured area until the statutes for any claims have expired, at which time the evidence should be destroyed.
- (7) See *CCDM 38.1.1.5* for further information on electronic surveillance.

4.16.1.3.4 (06-13-2017) Summons

- (1) The summons is an important tool for obtaining the records and testimony needed to complete in-depth examinations. SEP cases frequently involve uncooperative taxpayers who do not agree to be interviewed or provide available records to which they have access or control. When lack of cooperation occurs, serious consideration should be given to summoning the taxpayer for relevant testimony and records. Third party summonses should also be used to obtain necessary testimony and records.
- (2) SEP agents should be familiar with provisions of the law relating to the use and enforcement of a summons. SEP agents should use good judgment when considering the issuance of a summons. Consult with SBSE Counsel for guidance specific to your individual case.

- (3) A summons should be prepared and issued in accordance with the IRM 25.5, Summons.

4.16.1.3.5
(06-13-2017)
**Specific Item and
Indirect Methods**

- (1) SEP cases often involve taxpayers who do not maintain adequate books and records. Therefore, SEP agents must be well versed in the various methods of reconstructing income. The two basic approaches in determining correct taxable income are:
- Specific item method; and
 - Indirect method.
- (2) The specific item method uses specific items to identify unreported income from both legal and illegal sources. This preferred method limits the taxpayer's ability to challenge the government's determination since this method is based on information personal to the taxpayer.
- (3) When specific items are not traceable, it may be necessary to use indirect methods to reconstruct income based on circumstantial evidence. The use of indirect methods is allowed by IRC 446, General Rule for Methods of Accounting, and has been upheld by the courts in civil and criminal tax cases.
- (4) The court tested methods of reconstructing income include:
- Bank deposits and cash expenditures;
 - Expenditures method (commonly known as Source and Application of Funds);
 - Net worth;
 - Percentage mark-up;
 - Unit and Volume.
- (5) The indirect method used must include evidence of a likely source of taxable income. In addition, the SEP agent must always address and refute possible defenses, such as nontaxable sources of income and cash hoard, regardless of whether the taxpayer raised such defenses.
- (6) IRM 4.10.4.6, Formal Indirect Methods of Determining Income, provides guidance on the use of various indirect methods.

4.16.1.3.6
(06-14-2011)
**Administrative Joint
Investigations**

- (1) SEP agents devote a significant amount of time working joint investigations with CI. Joint investigations are also known as administrative tax cases.
- (2) Joint investigations are comprehensive investigations conducted jointly by CI and Examination. The primary purpose of a joint investigation is to determine if criminal tax fraud is involved and whether criminal prosecution should be recommended. In addition to assisting with the criminal tax computation, SEP agents are responsible for the civil aspects of the case including, but not limited to, the following:
- Statute protection, see IRM 25.1.4.4.8, Statute Protection,
 - Consideration of subsequent year and related returns,
 - Preparation of the Revenue Agent workpapers and examination report of adjustments for prosecution and non-prosecution years,
 - Civil closing.
- (3) Joint investigations can originate from the following:

- a. Form 2797, Referral Report of Potential Criminal Fraud Cases, or
 - b. Form 6544, Request for Cooperating Examiner.
- (4) Upon assignment, the SEP agent should verify the case is an administrative tax case rather than a grand jury case. Different procedures apply for grand jury cases as explained in the following section.
- (5) SEP agents and SAs have separate, clearly defined roles in joint investigations. SEP agents must not participate in law enforcement activities nor be placed in situations for which they are not trained and/or which may put them or others at risk.
- (6) SEP agent responsibilities and detailed procedures regarding joint investigations can be found in IRM 25.1.4, Administrative Joint Investigation.
- (1) Guidance for grand jury investigations may be found in IRM 25.1.5, Grand Jury Investigations.
- (2) A grand jury is a powerful investigative tool for the government used to investigate allegations of criminal wrongdoing. SEP agents are frequently involved with grand jury investigations and grand jury material.
- (3) Proceedings of a grand jury are secret and are governed by Rule 6(e) of the Federal Rules of Criminal Procedure. The use of grand jury information for civil purposes is further restricted by the decisions in *United States v. Baggot*, 103 S. Ct. 3164 (1983) and *United States v. Sells Engineering, Inc.*, 103 S. Ct. 3133 (1983).
- (4) The group manager (GM) of an agent assigned to a grand jury case should request they be added to the grand jury access list (6(e) list) to effectively participate in discussions involving case actions and provide experienced feedback. The GM should evaluate the employee on current assignments, manage workload and balance grand jury inventory.
- (5) The SEP agent assigned to a grand jury assists the U.S. Attorney's office, which controls the investigation. The SEP agent is primarily concerned with the consideration, resolution and review of issues as they relate to the criminal charges being investigated.
- (6) Although the SEP agent involved in the grand jury case will not complete the final civil tax liability, they must be aware of the civil ramifications of information received or developed during the grand jury investigation. Only information made a matter of public record or obtained prior to, or independent of, the grand jury can be used in a subsequent civil case.
- (7) SEP agents should prepare RARs using an offline RGS account. The RARs are not to be presented to the taxpayer for agreement. They must be clearly marked "For Criminal Tax Computation Purposes Only."
- (8) SEP agents may access IDRS or other return information to fulfill a CI request for assistance in a Title 26 investigation under IRC 6103(h)(1), Department of the Treasury, without regard to whether the investigation is currently before a grand jury or at any other stage. Accessing return information for a non-Title 26 investigation, such as a Title 31 structuring investigation, requires an ex parte

4.16.1.3.7
(04-06-2023)
**Grand Jury
Investigations**

order under IRC 6103(i)(1) , Disclosure of Returns and Return Information For Use in Criminal Investigations. Before release of this information, contact the Disclosure Office.

- (9) SEP agents may use their IRS credentials for identification purposes. When exhibiting their credentials, they should advise those contacted that they are acting as assistants to the attorney for the government in conjunction with an investigation.
- (10) IRS summonses are not used in a grand jury investigation. Documents and testimony are obtained by the U.S. Attorney's office using grand jury subpoenas.
- (11) The grand jury SEP agent is considered tainted and is prohibited from participating in any civil aspects of the case resulting from the grand jury. Managers on a 6(e) list are also considered tainted and must refer the civil closing to another group.

4.16.1.3.8 (06-14-2011)

Expert Witness and Trial Preparation

- (1) SEP agents often assist and/or testify in civil and criminal court proceedings. Examples include:
 - a. Criminal tax trials;
 - b. Tax court cases;
 - c. Grand jury proceedings;
 - d. Bankruptcy hearings;
 - e. Summons enforcement hearings; and
 - f. Judicial reviews of jeopardy and termination assessment cases.
- (2) SEP agent responsibilities will vary depending on the issues of the case. The government attorney will determine the role of the SEP agent.
- (3) Government prosecution cases require extensive time for preparation and trial. SEP agents should be prepared to spend any additional time necessary to assist the government attorney in the case.
- (4) The SEP agent should contact the local Disclosure Office to determine whether a testimony authorization is required pursuant to Treas. Reg. 301.9000-1, Definitions When Used in 301.9000-1 through 301.9000-6 (See 26 CFR 301.9000-1). See IRM 1.2.2.12.2, Delegation Order 11-2 (Rev. 4), Authority to Permit Disclosure of Tax Information and to Permit Testimony or the Production of Documents. In general, a testimony authorization is not required in a case referred by the IRS to the government where the government is calling the SEP agent as a witness.
- (5) The most common duty as a SEP agent in courtroom proceedings is testifying during a criminal trial as an expert witness or summary witness.
- (6) An expert witness is a person skilled in some area or who has experience or knowledge not generally known to ordinary persons (Federal Rules of Evidence, Rule 702). Under Rule 16(e) of the Federal Rules of Criminal Procedure, the defense can ask for the witness's qualifications. It is imperative SEP agents maintain all professional requirements and a current resume.
- (7) Once qualified before the court, the expert witness is called upon to express an opinion based on facts presumably in the record of the case. The expert witness reviews the government's evidence and expresses an opinion as to

the issue needing expert assistance. Generally, the expert witness is called to testify immediately prior to the government's final witness and is excluded from hearing testimony during the trial.

- (8) A summary witness listens to all evidence presented during the trial and is the final witness called in the government's case to convince the jury there was harm to the government. A summary witness will be qualified as an expert in federal income tax computations. Generally, the summary witness is a SEP agent or a compliance officer with no prior involvement in the investigation.
- (9) Occasionally, SEP agents will be used as both the expert witness and the summary witness. In this situation, the SEP agent renders an expert opinion and prepares the tax computation.

4.16.1.3.9

(06-14-2011)

Ex Parte Orders for Disclosure of Tax Returns and Tax Return Information

- (1) SEP agents may obtain information during an income tax investigation indicating that non-tax criminal violations have occurred, or may witness criminal acts falling under the jurisdiction of another federal agency. Except in rare and unusual cases, this information is considered tax return information as defined under IRC 6103, Confidentiality and disclosure of returns and return information. See IRM 11.3.34, Disclosure for Non-tax Criminal Violations, for situations where observing a criminal act would not be tax return information and could be disclosed to local, state or federal law enforcement agencies.
- (2) In general, tax returns and tax return information cannot be disclosed to other federal law enforcement agencies. However, other federal law enforcement agencies pursuing potential non-tax federal criminal charges may obtain an ex parte order through the U. S. Attorney's office in accordance with the requirements set forth in IRC 6103(i), Disclosure to Federal offices or employees for administration. See IRM 11.3.28, Disclosure to Federal Agencies for Administration of Non-Tax Criminal Laws, for IRC 6103(i), procedures. The ex parte order is forwarded to the Disclosure Office to obtain the necessary documents.
- (3) The Disclosure Office will only provide the information specified in the ex parte order to the specified parties.
- (4) For disclosure of Bank Secrecy Act Information (Title 31), refer to IRM 11.3.28.4.1, Disclosure of Bank Secrecy Act Information. Information will not be released through an ex parte order if it is determined by the IRS that disclosure would identify a confidential informant or seriously impair a civil or criminal investigation. See IRM 11.3.28.3, Procedures for Access to Returns and Return Information, paragraph (1)(c).
- (5) The SEP agent should consult with the Disclosure Office as to whether material developed subsequent to the ex parte order may be disclosed on a continuing basis. Such subsequent disclosure may be made only if the ex parte order provides for further disclosures and designates a specific cutoff date. See IRM 11.3.28.4, Disclosures in Conformity with an Ex Parte Court Order, paragraph (19).
- (6) State and local law enforcement agencies cannot obtain an ex parte order.

4.16.1.4
(04-06-2023)
**Sources and
Development of SEP
Cases**

- (1) This section provides guidelines for the identification and development of leads for SEP cases. The leads can be obtained from internal and/or external sources. These leads can then be developed into potential fraud cases using all available resources.
- (2) To properly develop a case, SEP agents must go beyond examining and interpreting taxpayer records. It is often necessary to go to third parties to obtain and/or verify information to determine the correct tax liability.
- (3) SEP agents must always follow the third-party contact provisions of IRC 7602(c), Notice of Contact of Third Parties, when identifying and developing cases.
- (4) SEP agents must follow current IRS guidelines relating to case development and case assignment. SEP agents may not develop their own cases from leads received from internal or external sources. SEP leads received through internal and external sources will go through an independent arm's length selection and classification process. All leads should be forwarded electronically to the approved Area Planning and Special Programs (PSP) coordinator via Form 5346, Examination Information Report. SEP information referrals may include, but are not limited to, informant information, information received from federal, state and local law enforcement agencies, court documents, public databases, newspaper articles, internet and Suspicious Activity Report (SAR) Review Team Referrals. Case building actions will be completed by Brookhaven Campus (BC). See IRM 4.1, Planning and Special Programs, for an expanded explanation on case development, case assignment and workload delivery.
- (5) Brookhaven Campus will identify SEP referrals with Project Code 1261, Tracking Code 8306 and Aging Reason Code (ARC) 19.

4.16.1.4.1
(04-06-2023)
Fraud Development

- (1) SEP Identifies, develops and investigates those issues which have significant fraud potential and develops appropriate referrals. The SEP agent examines returns that are complex and may have camouflaged fraud indicators. When the SEP agent has determined that fraud indicators are present, IRM 25.1.2.2, Fraud Development Procedures should be adhered to.
- (2) The SEP agent will discuss cases that have first indicators of fraud with the group manager. If the group manager agrees there are indicators of fraud, then the examiner should contact the FEA using the Specialist Referral System (SRS). See IRM 25.1.6.3, Procedures for additional information.
- (3) If the SEP agent determines that a potential fraud case has firm indications of fraud/willfulness and meets criminal criteria, the SEP agent will then complete Form 2797 in accordance with IRM 25.1.3.3, Preparation of Form 2797 - Referral Report of Potential Criminal Fraud Cases.

4.16.1.4.2
(06-13-2017)
**Sources for Obtaining
Leads**

- (1) Internal sources may include:
 - a. Form 3949, Information Report Referral;
 - b. Form 3449, Collection Referral Report;
 - c. Form 5666, TE/GE Referral Information Report;
 - d. Information pertaining to illegal income or jeopardy and termination assessments;
 - e. Compliance Initiative Project (CIP) information;

- f. Title 31 and Form 8300, Report of Cash payments Over \$10,000 Received in a Trade or Business leads;
- g. Closing Agreements and Revenue Agent Reports on closed criminal cases;
- h. Referrals from other operating divisions; and
- i. Whistleblower Claims (Form 211, Application for Award For Original Information).

(2) External sources may include:

- a. Informant information;
- b. Information received from federal, state and local law enforcement agencies; and
- c. Court documents, public databases, newspaper articles, internet and others.

4.16.1.4.3
(06-14-2011)

**Internal Resources for
Case Development**

- (1) Prior year Revenue Agent Reports (RAR) and workpapers.
- (2) Prior year Special Agent Reports (SAR) and exhibits for administrative cases only.
- (3) CI information and case development files including prime leads.
- (4) Collection files containing financial information.
- (5) Transcript of accounts (IDRS).
- (6) Information Return Processing (IRP) transcripts.
- (7) Bank Secrecy Act Information (Currency Transaction Reports and Suspicious Activity Reports).
- (8) International Revenue Agent Reports.
- (9) Treasury Enforcement Communication System (TECS) records.

4.16.1.4.4
(06-14-2011)

**External Resources for
Case Development**

- (1) Research databases (for example, Bloomberg Tax, Accurint, Westlaw and others).
- (2) Asset locator services.
- (3) Records of civil and criminal cases from federal, state and local courts.
- (4) Records of parole and from probation officers.
- (5) Bankruptcy filings.
- (6) U.S. Coast Guard (vessels registered with the Coast Guard may not be registered with a state).
- (7) Drug Enforcement Administration (DEA).
- (8) Federal Bureau of Investigation (FBI).
- (9) U.S. Immigration and Customs Enforcement (USICE).
- (10) U.S. Secret Service.

- (11) Bureau of Alcohol, Tobacco Firearms, and Explosives (ATF).
- (12) National Crime Information Center (NCIC) through CI.
- (13) Department of Homeland Security (DHS).
- (14) Department of State.
- (15) Treasurer of the United States.
- (16) Federal Aviation Agency (FAA).
- (17) Securities and Exchange Commission (SEC).
- (18) U.S. Postal Service.
- (19) State and local law enforcement agencies.
- (20) Department of Motor Vehicles (DMV).
- (21) Department of Agriculture.
- (22) Health and Human Services (HHS).

4.16.1.4.5
(04-06-2023)
Third-Party Contacts

- (1) When obtaining information from outside sources, SEP agents must follow third-party contact procedures in accordance with IRC 7602(c), Notice of Contact of Third Parties. See IRM 25.27.1, Third Party Contact Program.
- (2) Before making a third-party contact, SEP agents must send Letter 3164-E, (Exam-1) Third Party Contact.
- (3) Contact with the IRS, initiated by a third party such as a member of law enforcement or an informant, is not considered a third party contact. However, if the SEP agent contacts a third party regarding a specific taxpayer, the contact requires advance notification to the taxpayer and a recordation of the contact.
- (4) IRM 25.27.1.3.2 , Exceptions to IRC 7602(c) Notification Requirements, discusses seven exceptions to the advance taxpayer notification requirements.
- (5) In jeopardy/termination assessment cases notification requirements do not apply during the jeopardy period. See IRM 25.27.1.3.7, Jeopardy Situations, for guidance.
- (6) Notification requirements do not apply when the third party has a reprisal concern. Reprisal must be addressed in every third-party contact. See IRM 25.27.1.3.3 , Reprisal, for information.
- (7) Notification requirements do not apply to pending criminal investigations. See IRM 4.11.57.5.4 , Pending Criminal Investigation, for details.
- (8) For additional guidance, see IRM 4.10.3.3, Interviews: Authority and Purpose. See IRM 4.11.57, Third Party Contacts.

4.16.1.5
(06-14-2011)
AIMS Codes for SEP

- (1) This section identifies the various source codes, status codes, activity codes and project codes unique to SEP.

4.16.1.5.1 (1)

(04-06-2023)

Source Codes

Source Codes	Definitions
88	Source Code 88 is used to request returns and/or AIMS control on case(s) involving illegal activity.
89	Source Code 89 (Special Enforcement Related Pick-ups) is used to request a multi-year or related return and or AIMS control on case(s) involving illegal activity.
90	Source Code 90 (Fraud Regular) is used to request returns and AIMS/or AIMS control on case(s) for a joint investigation or for the purpose of referring such returns to CI. In general, returns already open on AIMS with another source code should not be updated to Source Code 90. A fraud project code should be used to identify the case.

4.16.1.5.2 (1)

(06-14-2011)

Status Codes

Status Codes	Definitions
17	Status Code 17 is used when the revenue agent, the group manager and the Fraud Enforcement Advisor (FEA) agree fraud potential exists. Note: When returned from CI for civil settlement, Status Code 17 is used for civil fraud development if concurrence was reached by the revenue agent, the group manager and the FEA. If no fraud potential exists, Status Code 12 is used.
18	Status Code 18 is used when CI accepts a criminal fraud referral. Status Code 18 is also used when CI request a cooperating agent - NOT GRAND JURY.

4.16.1.5.3 (1)

(06-13-2017)

Project Codes

Project Codes	Definitions
0001	Drug Enforcement Task Force Case - Termination.
0002	Drug Enforcement Task Force - Jeopardy.

Project Codes	Definitions
0003	Drug Enforcement Task Force - Other.
0004	Regular Narcotics Case - Termination.
0005	Regular Narcotics Case - Jeopardy.
0006	Regular Narcotics Case - Other.
0017	Conditions of Probation Cases.
0076	Fraud Development (Campus).
0095	Request for Cooperating Agent Exam Referral.
0096	Request for Cooperating Agent Non-Exam Referral.
0133	CI - Non EITC Referral.
0146	Form 8300, Report of Cash payments Over \$10,000 Received in a Trade or Business fraud.
0147	Title 31 fraud.
0216	Civil Disposition - Grand Jury.
0217	Civil Disposition - Administrative.
0218	Other Fraud.
0442	Questionable Refund Detection Teams (QRDT).
1168	Criminal Restitution.
1261	Referral generated by a SEP group agent.

4.16.1.5.4
(06-13-2017)
Activity Codes

(1)

Activity Codes	Definitions
592	Narcotics/Information Gathering Projects - No return examined; to gather information and develop leads.
597	SEP Non-Case Time - To develop contacts for potential leads.
815	Grand Jury Non-Narcotics Related.
816	Grand Jury Drug Enforcement Task Force Case.
817	Grand Jury Narcotics Related - Other.
818	Details to CI/CAS.
821	Trial Assistance.

4.16.1.5.5 (1)

(06-13-2017)

Aging Reason Codes

Aging Reason Codes	Definitions
16	Conditions of Probation.
17	Civil Disposition - Grand jury cases no conditions of probation.
18	Civil Disposition - Administrative cases no conditions of probation.
19	For tax return being examined by a SEP agent and the source code (SC) is not 88, 89 or 90. ARC 19 would be placed on both the original return and related pick-up examinations. ARC 19 should be placed on all referrals generated and worked by a SEP by agent. ARC 19 should not be placed on returns worked outside of the SEP Program.