



MANUAL TRANSMITTAL

Department of the Treasury
Internal Revenue Service

5.1.5

NOVEMBER 4, 2019

EFFECTIVE DATE

(11-04-2019)

PURPOSE

- (1) This transmits revised IRM 5.1.5, *Field Collecting Procedures, Balancing Civil and Criminal Cases*.

MATERIAL CHANGES

- (1) 5.1.5.1: Specialty Collection References deleted.
- (2) 5.1.5.1.3(2): Specialty Collection reference changed to Civil Enforcement Advisory & Support Operations (CEASO).
- (3) 5.1.5.1.3: Citations updated.
- (4) 5.1.5.1.6: Deleted "Terms" subsection. "Acronyms" subsection renumbered to 5.1.5.1.6.
- (5) 5.1.5.12(2): Citation added.
- (6) 5.1.5.13(3): Exception added for cases in Status 72, CDP.
- (7) 5.1.5.13.1(1): Citation added.
- (8) 5.1.5.14(3): Additional citation added.
- (9) 5.1.5.15.1(5): Reference to Title 26 interest removed from Note.
- (10) 5.1.5.15.3(3): Note added to address limited period of assessment for select RBA cases.
- (11) 5.1.5.15.4: Updated to clarify that an MFT 31 is not always present for RBA.
- (12) 5.1.5.15.5: Updated to reflect revisions to policy on accrued interest for Restitution-Based Assessments.
- (13) 5.1.5.15.6(1): Examination Technical Services email address added.
- (14) 5.1.5.15.7: Updated language concerning explanation of restitution debt.
- (15) 5.1.5.16(1): Correction to coordination with DOJ, not Examination Technical Services.
- (16) 5.1.5.16.3: Change to calculation of conditional probation expiration date.
- (17) 5.1.5.16.4: Updated language for clarity.
- (18) 5.1.5.17(4): Updated to limit input of 'Restitution' to Program Name field on ICS.
- (19) 5.1.5.18: Updated to provide guidance on CSEDs for Restitution-Based Assessments, including new limited period of enforceability for specific RBAs.
- (20) 5.1.5.18.6: Updated to clarify language concerning Offers in Compromise and Restitution.
- (21) 5.1.5.19.3(5): Updated to add Taxpayer Identification Number as information which may help identify proper payment application.
- (22) 5.1.5.27(1): Updated to clarify appropriate closing time frame for Probation NF OI cases.

EFFECT ON OTHER DOCUMENTS

IRM 5.1.5 dated October 6, 2017 is superseded.

AUDIENCE

Field Collection and Specialty Collection - Advisory employees.

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5.1.5

Balancing Civil and Criminal Cases

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5.1.5.1
(11-04-2019)
Program Scope and Objectives

- (1) **Purpose:** This IRM section provides instructions for working civil investigation cases conducted simultaneously with criminal investigation cases, restitution-based assessment (RBA) cases, and Conditions of Probation investigations.
- (2) **Audience:** The primary users of this IRM are employees in Field Collection.
- (3) **Policy Owner:** Director, Collection Policy
- (4) **Program Owner:** Collection Policy - Employment Tax Group
- (5) **Primary Stakeholders:**
 - Field Collection
 - Fraud Policy and Operations
 - Campus Collection
- (6) **Program Goals:**
 - Identify the best alternative from the civil and criminal sanctions available
 - Appropriately work cases which include RBA modules
 - Address noncompliance with IRS-related conditions of probation imposed by the courts

5.1.5.1.1
(10-06-2017)
Background

- (1) The IRS recognizes that attempts to concurrently pursue both the criminal and civil aspects of a case may jeopardize the successful completion of the criminal case. This IRM section provides guidance to coordinate and implement IRS policy on balancing criminal and civil aspects in enforcement. It also provides guidance for cases involving post-conviction conditions of probation, supervised release, and/or the payment of restitution to the IRS by defendants convicted of tax violations or tax-related offenses.

5.1.5.1.2
(10-06-2017)
Authority

- (1) Authorities for this work include:
 - Policy Statement 4-26, Criminal and Civil Aspects in Enforcement
 - Firearms Excise Tax Improvement (FETI) Act of 2010, Public Law No. 111-237

5.1.5.1.3
(11-04-2019)
Responsibilities

- (1) Headquarters Collection, Collection Policy is responsible for Collection policies and procedures applicable to probation, restitution, and civil enforcement in Collection cases with a criminal component.
- (2) Civil Enforcement Advisory & Support Operations (CEASO) has operational responsibility for coordination and control of Collection probation and restitution-based assessment cases.
- (3) Field Collection is responsible for conducting investigations in RBA and probation cases.

5.1.5.1.4
(10-06-2017)
Program Management and Review

- (1) The Advisory Measures Monitoring Report includes RBA measures.
- (2) Program effectiveness is measured through periodic operational and program reviews.

5.1.5.1.5
(10-06-2017)

Program Controls

- (1) Program controls to oversee the processing of restitution and probation inventory are found in IRM 1.4.50, *Resource Guide for Managers, Collection Group Manager, Territory Manager and Area Director Operational Aid*.

5.1.5.1.6
(10-06-2017)

Acronyms

- (1) The following acronyms are common to balancing civil and criminal cases:

Acronyms

Acronym	Definition
ALS	Automated Lien System
ASED	Assessment Statute Expiration Date
ATAT	Abusive Tax Avoidance Transaction
CC	Command Code
CCP	Centralized Case Processing
CDP	Collection Due Process
CEASO	Civil Enforcement Advice & Support Operations
CI	Criminal Investigation
CLO	Centralized Lien Operation
CNC	Currently Not Collectible
CSED	Collection Statute Expiration Date
DOJ	Department of Justice
DPC	Designated Payment Code
EFDS	Electronic Fraud Detection System
FETI	Firearms Excise Tax Improvement Act
FLU	Financial Litigation Unit
FTA	Fraud Technical Advisor
FTP	Failure to Pay
IA	Installment Agreement
ICS	Integrated Collection System
IDRS	Integrated Data Retrieval System
IRC	Internal Revenue Code
IRM	Internal Revenue Manual
IRS	Internal Revenue Service
MFT	Master File Tax

Acronym	Definition
MOI	Memorandum of Interview
NFOI	Non-Field Other Investigation
NFTL	Notice of Federal Tax Lien
NMF	Non Master File
OI	Other Investigation
OIC	Offer in Compromise
PACER	Public Access to Electronic Court Records
PII	Personally Identifiable Information
RBA	Restitution-Based Assessment
SAC	Special Agent in Charge
SB/SE	Small Business/Self-Employed
SPC	Submission Processing Center
TAS	Taxpayer Advocate Service
TBOR	Taxpayer Bill of Rights
TC	Transaction Code
TFRP	Trust Fund Recovery Penalty
TS	Technical Services
USAO	United States Attorney's Office
UTC	Unable to Contact
UTL	Unable to Locate
W&I	Wage & Investment

5.1.5.2
(12-16-2014)
Parallel Investigations

- (1) The Internal Revenue Code (IRC) contains both civil and criminal provisions to address fraud. Revenue officers may conduct civil investigations before, during or after criminal investigations of the same taxpayer. If the investigation is conducted simultaneously with the criminal investigation, the process is referred to as a parallel investigation.
- (2) Collection employees should be alert to the presence of a TC 914, Active Criminal Investigation, on related tax modules in pre-contact analysis. The TC 914 is not an entity code but the code's presence on any module in the case may indicate the need to apply parallel investigation procedures.

Caution: See IRM 25.4.1, *Employee Protection - Potentially Dangerous Taxpayer* and IRM 25.4.2, *Employee Protection - Caution Upon Contact Taxpayer* for criteria and complete information on these employee protection programs.

- (3) Parallel proceedings involve simultaneous investigations or litigations of separate civil and criminal aspects of a case involving a common individual or entity. Some potential civil remedies that could occur in a parallel proceeding are IRC § 6672 Trust Fund Recovery Penalty investigations, injunctions for pyramiding taxpayers, Notice of Federal Tax Lien filings, issuance of levies, jeopardy levies, service of summons, and pursuit of erroneous refunds.
- (4) Civil and criminal parallel investigations are conducted as separate investigations. They are not joint investigations but do require coordination between the operating divisions throughout the civil investigation and litigation processes. Although regularly scheduled coordination meetings are required (see IRM 5.1.5.6, *Coordination Meetings*), Criminal Investigation (CI) must not direct the revenue officer's actions in the civil investigation.

Note: The local Fraud Technical Advisor (FTA) serves as a liaison to CI and can be a valuable resource in the coordination process.

5.1.5.3
(11-04-2019)
**IRS Policy Concerning
Parallel Investigations**

- (1) Policy Statement 4-26, Criminal and civil aspects in enforcement provides guidance on taking civil enforcement action when the taxpayer is under criminal investigation. See IRM 1.2.1.5.11, *Policy Statement 4-26 (Formerly P-4-84), Criminal and civil aspects in enforcement.*
- (2) IRS policy concerning parallel investigations and the procedures in this IRM are intended to provide guidance in identifying the best alternative from the civil and criminal sanctions available, prevent additional loss of tax revenue, and foster voluntary compliance.
- (3) Civil enforcement actions with respect to taxable periods of the same and other types of taxes **not included** in the criminal investigation generally do not imperil successful criminal investigation or subsequent prosecution. Therefore, civil enforcement action for such taxable periods or other types of tax will proceed concurrently unless there is agreement between the responsible functions to withhold civil action in whole or in part during the criminal investigation. See IRM 1.2.1.5.11(4), *Policy Statement 4-26 (Formerly P-4-84), Criminal and civil aspects in enforcement.*

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- (8) Any proposed civil enforcement action *must be coordinated* to minimize adverse consequences on the criminal investigation. For example, a revenue officer should not take the following actions without first obtaining the approval of the SAC:
- contacting the taxpayer
 - taking enforced collection action against the taxpayer
 - entering into an agreement with the taxpayer to resolve civil tax liabilities
- (9) Because civil enforcement actions with respect to the same taxable periods and same types of taxes for those periods included in the criminal investigation may imperil the criminal investigation or subsequent prosecution, the consequences of civil enforcement action must be carefully weighed. However, there generally should be no suspension of collection action on assessed amounts of tax liabilities reported on filed returns. See IRM 1.2.1.5.11(8), *Policy Statement 4-26 (Formerly P-4-84), Criminal and civil aspects in enforcement*.

5.1.5.4
(08-03-2009)
**Resolving Conflicts
Regarding Parallel
Investigations**

- (1) If a conflict exists when a criminal investigation and collection action are ongoing at the same time, the affected operating divisions must resolve the conflict and determine how and when the civil and criminal actions should proceed.
- (2) A six way meeting will be held with the revenue officer, the revenue officer group manager, the special agent, the supervisory special agent, SB/SE Area Counsel, and Criminal Tax Counsel. The local Fraud Technical Advisor should also be consulted and attend the meeting, if possible. If a case is open in the U.S. Attorney's Office or the Department of Justice, representatives from those offices should also be invited to the meeting.
- (3) A decision will be made as to whether to conduct parallel investigations, to proceed solely criminally, or to proceed solely civilly. In some instances, civil action may be suspended temporarily (for no more than 90 calendar days), for example, to permit CI to complete an undercover investigation or execute a search warrant. In such cases, a date should be set for a follow up meeting to revisit the issue of proceeding with civil actions. See IRM 5.1.5.4.1, *Temporary Suspension of Civil Action*. If the case requires suspension of civil action for more than 90 calendar days, follow the procedures in IRM 5.1.5.4.2, *Case Monitoring When Civil Action is Suspended*.
- (4) Any disagreements on how to proceed should be elevated and resolved in accordance with the guidelines in P-4-26. See IRM 1.2.13.1.11. Any disagreements with the U.S. Attorney and/or Department of Justice should be brought to the attention of the Special Counsel for Civil/Criminal Coordination, Tax Division, Department of Justice.

5.1.5.4.1
(03-16-2016)
**Temporary Suspension
of Civil Action**

- (1) In cases where civil action is to be temporarily suspended, the following actions will occur:
- a. CI will control all modules in which civil action is to be suspended by requesting input of TC 914.

- b. A date will be established for a follow-up meeting to revisit the issue of proceeding with civil actions and reversing the CI controls. The follow-up meeting date should be no more than 90 days from the date civil action is suspended.
- c. Cases in which civil action is to be temporarily suspended will be retained in inventory.
- d. Collection will document the ICS case history with the determination to temporarily suspend civil action and the date of the follow-up meeting to revisit the determination.

Note: Collection Statute Expiration Dates (CSEDs), and Trust Fund Recovery Assessment Statute Expiration Dates (ASEDs), for these cases will continue to be monitored by the assigned revenue officer.

5.1.5.4.2
(08-03-2009)
**Case Monitoring When
Civil Action is
Suspended**

- (1) CCP will monitor cases in status 26 (assigned to a revenue officer) if the following two conditions are met:
 - a. a TC 914 appears on all of the modules, and
 - b. a decision has been made to suspend civil action due to the criminal investigation other than the temporary suspension discussed in IRM 5.1.5.4.1, *Temporary Suspension of Civil Action*, above.
- (2) See IRM 5.1.5.13, *Transferring Cases to CCP*, below, for further information regarding the monitoring of TC 914 cases by CCP.

5.1.5.4.3
(08-03-2009)
**Requests to Suspend
Collection Action on
Non-Tax Criminal Cases**

- (1) For purposes of this section, a non-tax criminal case is one where the investigation or prosecution is not being made on behalf of the IRS.
- (2) The Director, Field Area Collection, can suspend collection activity at the request of the Department of Justice on a taxpayer who is the subject of a non-tax criminal case.
- (3) However, the IRS may not inform the Department of Justice (DOJ) whether there is any ongoing collection activity with respect to a particular taxpayer, or whether the IRS has suspended, or will suspend, such activity unless the Department of Justice submits a written request meeting the requirements of IRC § 6103(i)(2). See IRM 11.3.28, *Disclosure to Federal Agencies for Administration of Nontax Criminal Laws*.
- (4) Telephone requests by a U.S. Attorney to suspend collection activity can be honored in emergency situations (such as when court action is imminent) provided a delay in collection activity would not be detrimental to the IRS. In such cases:
 - Disclosure of information — No information may be disclosed to the Department of Justice until the telephone request is followed up with a proper IRC § 6103(i)(2) request.
 - Suspension action — If suspended, review after 72 hours to determine if the suspension should be continued. In all cases, the decision to suspend civil activity should come only from the Director, Field Area Collection.
 - If contacted by the U.S. Attorney, revenue officers and advisors will make no comment on the case in question and refer the request, through proper channels, to the Director, Field Area Collection.

5.1.5.5
(08-03-2009)
**Commencement of
Parallel Investigation**

- (1) Once agreement is reached that a parallel investigation will take place, criminal investigators and revenue officers should coordinate the development of evidence that will support both the criminal and civil actions while being mindful of legal requirements and constraints.
- (2) Revenue officers should consult their local FTA if they require additional guidance on investigation constraints. FTAs have specialized training in Collection and Criminal Investigation procedures.
- (3) Ongoing communication is essential for a successful parallel investigation.

5.1.5.6
(08-03-2009)
Coordination Meetings

- (1) A coordination meeting must take place within 30 calendar days of the decision approving the parallel investigation. The participants must include the revenue officer, special agent, their respective managers and SB/SE Area Counsel and Criminal Tax attorneys. The local FTA should also attend the meeting, if possible. If a matter has been referred to the DOJ and/or U.S. Attorney's Office (USAO), the DOJ/USAO attorneys should be included in coordination activities.
- (2) Civil and criminal investigators and IRS attorneys should regularly coordinate their efforts through case status meetings held at least quarterly until the collection actions are complete. These coordination meetings will facilitate sharing important case developments.
- (3) The purpose of the case status meeting is to communicate the case developments and facilitate information sharing between Collection and CI. In grand jury cases, CI will not be able to share information subject to grand jury secrecy rules and IRC disclosure provisions. With the assistance of the FTA, the revenue officer should be prepared to discuss the collection plan of action and the impact of these actions on the criminal proceeding. CI must not direct the revenue officer's actions in the civil investigation.
- (4) Use of special investigative techniques such as undercover operations or the active pursuit of a search warrant should be communicated to Collection when practical. The timing of collection actions may affect special agent or revenue officer safety during a special investigative technique or the execution of a search warrant. Therefore, close coordination and communication is necessary when CI utilizes these techniques. Any decisions on how and when to proceed should be weighed in favor of employee safety concerns.
- (5) If concerns are raised about the criminal investigation or the collection investigation, those concerns or objections should be resolved by consultation among the collection and criminal personnel and their supervisors, Counsel attorneys and their managers. When the matter has been referred, the DOJ and/or USAO attorneys should also be included in the decision making process.

5.1.5.7
(08-03-2009)
Interviews

- (1) The revenue officer will inform the special agent assigned to the parallel investigation in advance of all planned meetings with the taxpayer(s).
- (2) If the special agent has informed the taxpayer under investigation of his or her Fifth Amendment rights, the revenue officer must explain to the taxpayer or his or her representative at each meeting that the revenue officer is conducting a civil investigation and the information provided will be shared with CI.
- (3) If a taxpayer under investigation inquires about criminal implications or whether the taxpayer is the subject of a criminal investigation before CI has contacted

the taxpayer, the revenue officer must be careful to provide accurate information and not mislead the taxpayer. The revenue officer should inform the taxpayer that they are conducting a civil investigation, and that the information obtained can be shared with CI. Under no circumstances should the revenue officer inform the taxpayer that the case has been referred to CI. This is CI's responsibility. The revenue officer should immediately notify the special agent of the contact with the taxpayer.

- (4) There is no specific prohibition on conducting joint revenue officer and special agent interviews of taxpayers. If a joint interview is conducted revenue officers and special agents must clearly identify themselves and their roles, and after the conclusion of the meeting prepare a joint Memorandum of Interview (MOI). The MOI should be prepared by the special agent and signed by both interviewers. The revenue officer should receive a copy of the MOI, while the special agent retains the original. All interview notes must be provided to the special agent.
- (5) CI may in some cases request that the revenue officer not contact the taxpayer or representative. In such cases, the revenue officer should refrain from issuing Letter 3164(X) or any appointment letters to the taxpayer or representative. SB/SE Area Counsel should be involved in any decision to conduct an investigation without contacting the taxpayer or representative.

5.1.5.8
(01-01-2007)
Witnesses

- (1) Revenue officers and special agents should attempt to use different witnesses to prevent the possibility of inconsistent testimony and potential discovery issues raised during the civil or criminal judicial process.
- (2) If the decision is made to use the same witness, the SB/SE Counsel Attorney, Criminal Tax Attorney and DOJ or Assistant U.S. Attorney assigned to the case should be consulted and coordinate any selection of these witnesses.

Note: The term "witness" in the context of this section refers to any third party interviewed by revenue officers in the conduct of a civil collection investigation.

5.1.5.9
(08-03-2009)
Information Sharing

- (1) Sharing information between revenue officers and government attorneys assigned to the case is a key ingredient in developing civil and criminal cases simultaneously and efficiently.
- (2) Unless prohibited under grand jury secrecy Rule 6(e) of the Federal Rules of Criminal Procedure and disclosure provisions of IRC § 6103, *Confidentiality and Disclosure of Returns and Return Information*, information sharing between civil and criminal functions is appropriate. Judicial districts and appellate courts have diverse rulings on what constitutes grand jury information; therefore, a determination about what information can be shared will be made on a case by case basis.
- (3) Special agents can develop evidence administratively through summonses, search warrants, witness interviews, and undercover operations. Evidence developed administratively before using the grand jury process may be shared by CI with Collection. Information obtained from CI should be included in civil investigation files as the information may be useful in future civil actions at the conclusion of the criminal case, including probation cases involving civil liability resolution.

- (4) In the coordination meeting noted in IRM 5.1.5.6, *Coordination Meetings*, Collection should request that CI separate non-grand jury information from grand jury material for civil investigation purposes. The non-grand jury information should be dated and initialed to document that the information was obtained prior to the grand jury.
- (5) Revenue officers must inform CI that civil files are available. Access to all available information in the civil file must be provided to CI. Prosecutors have a duty to disclose certain information to criminal defendants. It is therefore critically important for the special agents and Assistant U.S. Attorneys to be made aware of and provided access to all the information in the collection file, including documents, interview notes and any other information that Collection gathers. The sharing of information should be done so that there are no unnecessary delays.

5.1.5.10
(08-03-2009)
**Undercover Operations
and Search Warrants**

- (1) Collection actions generally will be temporarily suspended if CI is conducting an undercover operation or developing probable cause to execute a search warrant. Nevertheless, the benefits of an undercover operation or search warrant should be weighed against the need to prevent additional tax revenue loss.
- (2) Information obtained through a search warrant is generally not grand jury information. Search warrant information obtained during the grand jury process can be made available to revenue officers if no grand jury information was included in the affidavit for the search warrant. Criminal Investigation should consult with the Assistant U.S. Attorney assigned the case prior to turning over any information or documents obtained through the grand jury process.
- (3) Use of search warrant or undercover evidence should be coordinated with Area Counsel, CI and their respective Counsel, and the Assistant U.S. Attorney.

5.1.5.11
(08-03-2009)
**Administrative
Summons**

- (1) IRC § 7602(d) does not allow a summons to be issued or enforced concerning any person if a DOJ referral has been made by the IRS for such person. IRC § 7602(d)(2) defines a “referral” as either an IRS recommendation to DOJ for tax related grand jury investigation or criminal prosecution of the taxpayer or a request from DOJ made to the IRS pursuant to IRC § 6103(h)(3)(B) relating to the taxpayer. Coordination between SB/SE and CI is critical because pursuing a grand jury investigation or making a prosecution recommendation precludes using summonses in collection investigations.
- (2) IRC § 7602(d)(3) states that each taxable period and each type of tax is treated separately for purposes of what constitutes a referral.
- (3) If a taxpayer has been referred to DOJ for criminal prosecution and the revenue officer wants to issue an administrative summons to the taxpayer, the revenue officer and approving manager should speak with Area Counsel, the special agent, and Criminal Tax Counsel along with any DOJ attorney or Assistant U.S. Attorney assigned to the case prior to issuing the summons. During this conference, the parties will determine whether an administrative summons would be permissible under IRC § 7602(d)(1) and whether the issuance of a summons would adversely affect the criminal investigation or prosecution.

5.1.5.12
(11-04-2019)
**Cases Under
Jurisdiction of the
Department of Justice**

- (1) Criminal Investigation refers cases to the DOJ Tax Division for prosecution. When DOJ has accepted the referral of the case, it is considered under the jurisdiction of DOJ.
- (2) IRC § 6103(h)(2) & (3) allows DOJ attorneys from both the civil and criminal sections to contact either civil or criminal investigators to solicit case information that may help perfect the matter referred to DOJ. Requests should be in writing and coordinated with CI and Disclosure. Grand jury information can be disclosed only to those parties on the grand jury list. Revenue officers will generally not possess grand jury information, but should be aware that any such information in their possession cannot be disclosed except in these very limited circumstances. Contact Area Counsel in the event there is any question about the information requested.
- (3) Advisory is often the default point of contact for these cases (see IRM 25.1.5.2(2), *Grand Jury Suspense*). When Advisory receives requests for information from CI or DOJ on these cases, an employee will determine whether the case is being actively investigated or in an inactive status such as queue assignment or Currently Not Collectible (CNC).
 - For active cases, determine the case assignment, provide CI/DOJ with the group manager contact and note the ICS history. If information is provided directly to DOJ, CI should be informed of the actions taken.
 - For inactive cases, determine the CI contact that will receive the Advisory report noted in (6) below and open an ICS control no later than five (5) business days of receipt of the CI/DOJ request.
- (4) For cases under active collection investigation, the Director, Field Area Collection is responsible for coordinating collection activities with CI. In cases under DOJ jurisdiction, active cases will also be coordinated with DOJ through CI. A transmittal memorandum from the Director, Field Area Collection will be addressed to CI and will include:
 - Pending civil matters
 - Dates of assessment for all periods for which collection action is proposed
 - All outstanding liabilities of the taxpayer and related entities and modules
 - Balance owing on the assessed amounts
 - Civil action already taken on any outstanding liabilities
 - Assets owned by the taxpayer
 - Value of the taxpayer's assets
 - Other claims, if any, against the taxpayer's assets
 - Conclusion as to whether personal contact with the taxpayer would be necessary
 - Advice as to whether collection activity other than levy, such as filing a Notice of Federal Tax Lien, would be sufficient to protect the interest of the United States
 - Actions the Field Collection Area Director plans to take on these accounts in the event CI and DOJ (when the case has been referred to DOJ) concur with the Field Collection Area Director's determination that the proposed civil action will not prejudice the pending criminal case
 - Conclusion as to whether even the passive-type collection activity would tie up the taxpayer's assets to the extent that the taxpayer would be unable to finance a defense of the potential criminal prosecution

- (5) Criminal Investigation will be responsible for:
 - Reviewing the proposed civil actions
 - Notifying the Field Collection Area Director of any proposed actions they feel might imperil the criminal case
- (6) Advisory will report to CI on the inactive cases noted above, including the following information:
 - a description of the inactive status of the case (queue, CNC, etc.)
 - the taxpayer's compliance with any installment agreement for assessed liabilities
 - contact information in the event further case information is required

5.1.5.13
(11-04-2019)
**Transferring Cases to
Centralized Case
Processing (CCP)**

- (1) When the decision is made to suspend all civil action due to the criminal investigation, cases in status 26 will be transferred to CCP for monitoring if all IRM requirements are met. Before transferring a case to CCP, a decision must be made as to whether civil enforcement actions will imperil a successful criminal investigation or subsequent prosecution. If a decision is made to take civil action, follow the parallel investigation procedures set forth in IRM 5.1.5.5, *Commencement of Parallel Investigation*, above.
- (2) During CCP monitoring, Field Collection must ensure that transferred cases continue to meet CCP monitoring requirements. CCP will issue Other Investigations (OIs) whenever actions are needed to ensure these requirements are met.
- (3) The following cases should **not** be transferred to CCP for monitoring:
 - Cases in the queue (status 24)
 - Currently Not Collectible (status 53)
 - Cases in litigation (e.g., litigation, bankruptcy (status 72)

Note: Exception - Modules in Status 72 with TC 520 cc 76/77, Collection Due Process for lien/levy, will be accepted for monitoring. Review IDRS to verify basis for Status 72. See also, IRM 5.4.13.3(3), *TC 914 Cases*.

- Cases where the Assessment Statute Expiration Date (ASED) or Collection Statute Expiration Date (CSED) will expire within one year
- Offer in Compromise (OIC) (status 71 in any module)
- Cases in status 12

Note: If the situation arises where modules have mixed statuses, determine whether the status for certain modules needs to be reactivated due to open activity on the account (i.e., criminal investigation). Refer mixed status cases to CCP if restrictive conditions prevent modules that are in status 24 or 53 from being reactivated. Do not refer cases to CCP if any module is in status 72 (litigation) or status 71 (OIC). Also, cases where there is an imminent statute for any period should not be referred to CCP until the issue is addressed. See IRM 5.1.5.13.1, *Cases with Imminent Statutes*, below.

- (4) CCP will monitor balance due and delinquent return cases. A TC 914 should appear on all modules showing a delinquency *before* the case is transferred.

- a. If a case is transferred to CCP and subsequent balance due modules open on the account and have no TC 914 controls, CCP will issue an OI to the last revenue officer assigned to the account.
- b. The revenue officer will contact the CI special agent to advise him/her that the modules are not protected by the TC 914 controls.
- c. The special agent should complete Form 4135, *Criminal Investigation Control Notice*, to place TC 914 controls on the new modules unless civil action is to take place.

Note: Responsibility for inputting the TC 914 remains with CI.

5.1.5.13.1
(11-04-2019)
**Cases with Imminent
Statutes**

- (1) Cases where the ASED or CSED will expire within one year will not be transferred to CCP without first obtaining approval from the revenue officer's group manager and managerial approval from CCP. The revenue officer group manager will secure CCP managerial approval via telephone or e-mail from the group manager, Field Office Resource Team.

Note: Any actions to address an imminent statute must be coordinated with CI. See IRM provisions relating to parallel investigations, above.

See also, IRM 1.2.1.5.11, *Policy Statement 4-26 (Formerly P-4-84), Criminal and civil aspects in enforcement*.

- (2) Before a case is transferred to CCP, the ICS history must reflect the actions taken regarding any imminent ASEDs or CSEDs.
- (3) If the ASED for assessing the Trust Fund Recovery Penalty (TFRP) against a potentially responsible officer will expire within one year and either the employer or the potentially responsible officer is under criminal investigation, use Form 10498-C, *Intent to Commence Civil Action - Statute Protection for Assessment of TFRP*, to document agreement between Collection and CI regarding what, if any, actions should be taken to protect the ASED, or to acknowledge agreement that the ASED should be allowed to expire.

Note: If a Letter 1153 (DO) has already been issued to the potentially responsible office prior to the commencement of the criminal investigation, Collection must notify CI that a Letter 1153 (DO) has been issued, explain the appeal rights that the taxpayer has as a result of such notification (see IRM 5.7.6.1.3), *Appealing the Proposed Assessment*, and determine the best course of action.

- (4) If the CSED will expire within one year and the taxpayer is under criminal investigation, use Form 10498-D, *Intent to Commence or Continue Civil Action - Collection Statute Protection*, to document agreement between Collection and CI regarding what, if any, civil collection actions should be taken to protect the CSED, or to acknowledge agreement that the CSED should be allowed to expire.
- (5) In order for either Form 10498-C or Form 10498-D to be effective, joint approval must be indicated by the signatures of the appropriate Collection Field Territory Manager and the CI Special Agent in Charge. Follow the procedures in IRM 5.1.5.4, *Resolving Conflicts Regarding Parallel Investigations*, above, to resolve any disagreements between Collection and CI regarding the commencement or continuation of civil collection actions to protect the applicable statute of limitations.

- (6) Retain a copy of the Form 10498-C or 10498-D, as applicable, in the case file and document the case history accordingly. In limited circumstances it may be possible to extend the CSED. See IRM 5.17.4.5, *Administrative Procedures for Extending Period of Limitations for Collection by Waiver*.

5.1.5.13.2
(10-06-2017)
**Procedures for
Transferring Cases to
Centralized Case
Processing (CCP)**

- (1) If a determination is made that civil action should be suspended on all modules while the criminal case is active, use the following procedures to close out the case and transfer it to CCP:

- a. Verify that all modules have a TC 914 input (for cases with delinquent return only periods, follow the procedure in IRM 5.1.11.6.2.1(3), *Preparing and Processing Fraud Referrals*).

Note: If TC 914 is present in some tax periods, but not in others, Field Collection employees should contact CI to determine whether or not collection should be suspended and input of additional TC 914s should be initiated by CI. If needed, the local FTA can assist with requests to CI for input of TC 914s.

- b. Once TC 914 appears on all balance due modules, notify the group manager to remove the ICS sub code 910; if there is no sub code 910, ensure that the entity 971/281 is reversed via input of a 972/281. Use ICS options: "Collection Activities," "FTA Involvement," "Generate 972/281."
- c. Create an incoming OI on the ICS case; this incoming OI will be included in the case transfer to CCP and will be used by CCP for monitoring and control procedures. From the ICS Summary Screen, select the following:
- i) "Collection Activities"
 - ii) "Create Modules"
 - iii) "Create OI"
 - iv) "Create Incoming OI"
 - v) For the initial assignment, use the originator's (primary RO) assignment number
 - vi) In the "Action Requested" field, select "Other"
 - vii) In the "Remarks" field, insert "181 CID Control"
 - viii) Select "Save"
- d. Once you have created the OI, transfer the entire ICS case to CCP. From the ICS Summary Screen, select the following:
- i) "Collection Activities"
 - ii) "Transfer"
 - iii) "Transferee Office Requests Transfer"
 - iv) At "Enter Receiving Assignment Number" insert **35796979**
 - v) At the ICS prompt, "Open CIP/OI/FTD Assigned to originator # (which is primary). Include these items in Transfer Action?" "Y/N?" select "Y"
 - vi) When prompted, "do you want a Form 3210 to print for this transfer?" select "Yes"
 - vii) Insert a note in the remarks section of the Form 3210: **TC 914 Monitoring**
 - viii) The case will show approval pending until the Group Manager approves the transfer
- e. Once approved, send your closed case file, marked "914" with the Form 3210 to the following address:

Internal Revenue Service

2970 Market Street

Philadelphia, PA 19104

Mail Stop 5-E04.116

Attn: TC 914 Monitoring

- f. Upon case receipt, CCP will ensure the input of the STAUP 91 on all modules in status 26 which have a TC 914.
- g. CCP will monitor the case, including any CSED or TFRP ASSED statute issues, while the criminal investigation is pending and issue any necessary OIs to the field.

Note: If the above outlined procedures are not followed, the case transfer will be rejected back to the originator for corrective action.

- (2) If an ATAT case is transferred to CCP for monitoring, special instructions must be provided by the transferring office to CCP to ensure that any OIs subsequently issued by CCP are issued to the referring ATAT revenue officer, or to the appropriate Collection ATAT coordinator if the ATAT revenue officer is no longer assigned to the case.

5.1.5.13.3
(12-16-2014)

**Other Investigations (OI)
Issued by Centralized
Case Processing (CCP)**

- (1) CCP will issue OIs to the field group for issues requiring field assistance or investigation, including the following:
 - two-year collection risk analysis (e.g., collectibility determination, continued noncompliance, status of CI investigation)
 - CSED protection
 - ASSED protection for potential Trust Fund Recovery Penalty (TFRP) assessments
 - Notice of Federal Tax Lien refiling determinations
 - new balance due modules that need TC 914 input or parallel investigation

Note: Revenue officers should not close new balance modules with TC 530 cc 12 (unable to contact) or TC 530 cc 03 (unable to locate).

- (2) CCP will issue an OI to the field group every two years for purposes of determining whether administrative collection should remain suspended. The OI will request that the revenue officer conduct a risk analysis to determine:
 - the status of the criminal investigation
 - whether the taxpayer's noncompliance continues for tax periods subsequent to the periods under criminal investigation
 - whether there is any indication that the taxpayer is fraudulently transferring property or otherwise taking actions to avoid future collection.

Caution: No collection action should be taken without the concurrence of CI. Do not contact the taxpayer without the prior approval of the Special Agent assigned to the case. If contact with the taxpayer is prohibited, the risk analysis will be based on the revenue officer's contact with the Special

Agent, an analysis of internal IRS records, and other sources of information for which access will not jeopardize the criminal investigation.

- (3) If after coordination with CI it is determined that collection action should remain suspended, the revenue officer will document the basis for that determination in the case history. If it is determined that collection action no longer needs to be suspended for all or some of the modules, then the procedures above for parallel investigation should be followed.
- (4) The time period for completing the OI is set forth in IRM 5.1.8.2(3), *Courtesy Investigations*. (45 days after issuance in most cases). If additional time is needed, the revenue officer should work with the issuing employee to prevent the case from reissuing to the field.

5.1.5.14
(11-04-2019)
**Probation and
Restitution**

- (1) Following the conviction of a defendant for a criminal tax violation or tax-related offense, the court may order the defendant to comply with certain tax-related conditions of probation or supervised release, and/or order the payment of restitution to the IRS. Through a restitution order, a court can require a defendant in a criminal tax case to pay money to the IRS in order to redress the losses he or she inflicted on the Federal Treasury.
- (2) Public confidence in the tax system requires that the IRS exercise due diligence to ensure taxpayer compliance with conditions of probation relating to the IRS. To ensure that any noncompliance with IRS-related conditions of probation is detected and appropriate parties are timely notified, coordination by Advisory with Field Collection, Criminal Investigation, Examination, and the Department of Justice is required.
- (3) When the defendant is required to pay restitution to the IRS, coordination with the W&I Kansas City Submission Processing Center and SB/SE Ogden Campus Compliance Services may also be necessary to determine whether such payments are being received and cross-referenced to the correct account(s). See IRM 25.26.1, *Criminal Restitution And Restitution-Based Assessments*, and IRM 5.19.23, *Restitution-Based Assessments Processing*, for additional information.

5.1.5.15
(12-16-2014)
Restitution

- (1) In a criminal tax case, the offense generally results in the loss of government property, i.e., the money to which the government was entitled under the tax laws but which was not paid by the defendant.
- (2) A court can impose restitution as an independent element of a sentence or as a condition of probation or supervised release.
- (3) Restitution is generally limited to losses caused by the offense(s) of conviction. The major exception to this general rule is in cases involving plea agreements. The parties to a plea agreement in any criminal tax case may agree to restitution in an amount greater than the loss attributable to the offense(s).
- (4) The district court must determine the amount of restitution and must state that the defendant is required to pay a sum certain.

5.1.5.15.1
(11-04-2019)
**Court Ordered
Restitution**

- (1) One goal of resolving criminal tax cases is to require the defendants convicted (either by plea or by trial) to pay money to the IRS to redress the losses he or she inflicted on the Federal Treasury which resulted from their criminal conduct. Courts can award criminal restitution in tax cases when:
 - a. a defendant is convicted of a Title 18 offense involving a tax violation;
 - b. a defendant who pleads guilty to an IRC (Title 26) violation agrees, in the plea agreement, to pay restitution in connection with that violation; or
 - c. the court orders a defendant to pay restitution as a condition of supervised release or probation after a conviction on a Title 26 charge, whether or not the defendant agrees to the restitution.
- (2) In most criminal tax cases involving restitution, the amount of the tax loss is calculated from evidence admitted at trial or from information contained in the plea agreement and presented to the district court at sentencing. The tax loss may be comprised of tax, interest, and/or penalties.
- (3) The court may order the defendant to make payments to the court through a court ordered payment plan. These court ordered payments are sent by the Clerk of the Court to the W&I Submission Processing Center Restitution Unit in Kansas City.
- (4) Payment of restitution for taxes owed must be credited against the civil liability for unpaid taxes as provided in a plea agreement or court order.
- (5) Title 18 interest accrues as provided in 18 USC § 3612(f) on the restitution judgment if the restitution obligation exceeds \$2,500 and the defendant has not paid such obligation in full before the 15th day after the date of judgment. The IRS does not assess or administratively seek to collect Title 18 interest. The court has discretion to waive Title 18 interest or limit the amount of interest the defendant is required to pay. The Title 18 interest discussed here is separate and distinct from Title 26 interest that accrues under IRC 6601.

Note: If the court waives all interest and penalties during sentencing, the interest and penalties being waived are those that may be imposed under Title 18 of the United States Code.

5.1.5.15.2
(12-16-2014)
**Enforcement of
Restitution Orders**

- (1) The United States may enforce a *judgment* imposing restitution in accordance with the practices and procedures for the enforcement of a civil judgment under federal law or state law.
- (2) Each U.S. Attorney's Office has a Financial Litigation Unit (FLU), which has responsibility for the collection and enforcement of all civil and criminal judgments on behalf of the United States. Accordingly, the FLU is responsible for enforcing restitution orders and other orders relating to monetary penalties.
- (3) While the IRS cannot take administrative enforcement action to collect court ordered restitution, it still has responsibility for monitoring compliance if the payment of restitution to the IRS is a condition of probation.

5.1.5.15.3
(11-04-2019)
**Restitution-Based
Assessments (RBA)**

- (1) The Firearms Excise Tax Improvement (FETI) Act of 2010, Public Law No. 111-237, amended IRC § 6201(a)(4)(A) to provide that the IRS shall assess and collect the amount of restitution ordered in a criminal case for failure to pay any tax imposed by the IRC in the same manner as if such amount were a tax. The law applies to restitution orders entered after August 16, 2010.

- (2) Prior to the enactment of Public Law 111-237, the amount of restitution ordered payable to the IRS in a criminal case could not be assessed as a tax. This precluded the IRS from taking administrative collection action to collect the amount of restitution ordered.
- (3) The FETI Act of 2010 also provides that:
 - The assessment cannot be made until any appeals from the restitution order are concluded or the time for appealing has expired.
 - The amount of restitution ordered may not be challenged by the person against whom assessed on the basis of the existence or amount of the underlying tax liability in any proceeding authorized under Title 26 (including in any suit or proceeding in court permitted under IRC 7422).
 - In the case of any amount described in section 6201(a)(4), such amount may be assessed, or a proceeding in court for the collection of such amount may be begun without assessment, at any time.

Note: When a defendant **is convicted after a trial**, the enforceability of restitution ordered **SOLELY** as either a condition of supervised release or probation may shorten the collection period considerably. Restitution ordered solely as a condition of either supervised release or probation is only enforceable beginning with the first day of that period (the first day of supervised release following a prison term or the first day of probation, respectively) and ending with the last day of that conditional period as directed by the sentencing court. The periods of supervised release are on average 1 to 3 years long, and periods of probation are on average 3 to 5 years long. The Service can only make an assessment of an amount of restitution once the condition of restitution has begun.

- (4) .In addition to assessing the amount of restitution ordered under section 6201(a)(4), the IRS may also assess the taxpayer and collect Title 26 interest and penalties if there is an independent basis for doing so apart from the criminal judgment and order, e.g., an assessment pursuant to a notice of deficiency, a signed Form 4549, *Report of Income Tax Examination Changes*, a Form 870, *Waiver of Restrictions on Assessment and Collection of Deficiency in Tax and Acceptance of Overassessment* or other consent, self-reported liabilities on a delinquent return(s), or a plea agreement. In such a case, coordinate the collection of the restitution amount assessed with the other assessment so that the restitution amount ordered is not collected twice.
- (5) While a taxpayer may not challenge the amount of a restitution assessment under the IRC, the taxpayer may seek a review of collection actions being taken to collect the restitution-based assessment (RBA) through the Collection Due Process provisions of IRC § 6320 and § 6330.

5.1.5.15.4
(11-04-2019)
**Identifying
Restitution-Based
Assessments (RBA)**

- (1) RBAs will be established by Examination. An MFT 31 module will generally be present for each tax year and/or tax period for which assessable criminal restitution was ordered by the court.

Note: In the rare instances where the defendant is a non-individual (i.e., a corporation), the RBA will be made on the applicable MFT of the non-individual (i.e., MFT 02). To identify this module as a restitution assessment module, a TC 971 AC 102 will be input onto the MFT module of the non-individual defendant. See IRM 4.8.6.2.2.2, *Assessing Restitution*.

- (2) The assessment will be made using a TC 290 or TC 298 with adjustment reason codes 141 through 148. The reason codes explain the type of restitution assessment.
- (3) The module will contain a TC 971 with action code 102 and TC 971 with action codes 180 through 189. These action codes reflect the type of tax and tax periods for which restitution was ordered. The 18X action codes are indicators that there may be a potential duplication of assessment on another taxpayer account, for example, a spouse or a business. For an explanation of reason codes and action codes associated with RBAs, see IRM 5.19.23, *Liability Collection, Restitution-Based Assessments Processing*. For information about the assessment process see IRM 4.8.6, *Criminal Restitution and Restitution-Based Assessments*.

5.1.5.15.5
(11-04-2019)
**Interest on
Restitution-Based
Assessments (RBA)**

- (1) While Title 26 taxes, interest and penalties are often included in computing the tax loss for criminal purposes and therefore are included in the amount of restitution ordered, additional Title 26 interest and/or penalties normally do not accrue and should not be assessed on the restitution amount unless ordered (very rare) or unless there is an independent basis for assessing them, e.g., an assessment pursuant to a notice of deficiency, a signed Form 4549 Income Tax Examination Changes (RAR), a Form 870 Waiver of Restrictions on Assessment and Collection of Deficiency in Tax and Acceptance of Overassessment or other consent, self-reported liabilities on a delinquent return(s), or a plea agreement. See also, **Klein v. Commissioner**, 149 T.C. No. 15 (2017) and Chief Counsel Notice CC-2019-004.
- (2) If, however, the total amount of the restitution ordered by a federal district court includes interest and/or penalties in the tax loss calculation used to determine the RBA, the IRS should not abate such interest. Questions about whether interest was included in the amount of restitution ordered should be directed to Advisory via the centralized mailbox, **SBSE EEF Dallas Restitution*. r Advisory will consult with SBSE Counsel if clarification is needed.
- (3) Comments reflected on the Judgment and Commitment Order referring to Title 18 interest or the waiver of such interest do not have any bearing on whether there is an independent basis (notice of deficiency, etc.) for assessing Title 26 interest and/or penalties. The Service does not have jurisdiction over Title 18 interest. The defendant is required to pay this interest directly to the court, when applicable. The court can waive the Title 18 interest on the restitution ordered. If the defendant pays Title 18 interest to the sentencing court and the court forwards such payments to the Service, the Service applies the payments against the assessed amount, using the normal application of involuntary payment rules established by the Service.

5.1.5.15.6
(11-04-2019)
**Failure to Pay Penalties
and Restitution-Based
Assessments (RBA)**

- (1) A RBA does not constitute an assessment of an amount of tax required to be shown on a tax return specified in section 6651(a)(1), so the section 6651(a)(3) failure to pay (FTP) penalty cannot be imposed on a RBA unless the Judgment & Commitment Order or related plea agreement specifically includes a FTP penalty. In the very rare circumstance that an order or related plea agreement specifically includes a FTP penalty, the FTP penalty ordered as restitution must be assessed as shown in the order or plea agreement. It is important that penalties and interest included in the restitution order or related plea agreement are assessed as such, and are not included with the same transaction code as tax. Including penalties and interest in the same transac-

tion code as tax will result in the erroneous assessment of penalties and interest. See IRM 20.1.2.3.8.9, *Failure to Pay Penalty for Restitution-Based Assessments*, for additional penalty guidance.

Caution: The FTP penalty still applies to deficiency assessments and tax shown on a return even if they are assessed in the same module as a restitution-based assessment. The presence of a RBA in a tax module for a given tax period does not alter the character of other assessments in that tax module. Advisory may request assistance from Examination Technical Services (**SBSE Tech Svs Criminal Restitution*) to determine which amounts relate to the RBA and which amounts relate to the civil assessments.

- (2) IRS may conduct a civil examination of the same tax liability for which restitution was awarded. Such an examination may result in the assessment of a deficiency based on that examination. Also, a taxpayer may file a delinquent return showing tax for which criminal restitution was ordered. In either case the criminal RBA and the other assessment will duplicate each other in whole or in part; however, they may be collected only once.

Note: When tax shown on a delinquent return, or a deficiency, is assessed in the same tax module as a RBA, the total amount assessed is limited to avoid duplicate collection. Follow local procedures to obtain Counsel guidance in determining how the FTP penalty should be applied to the tax shown on the taxpayer's delinquent return, or to the deficiency, in these situations.

5.1.5.15.7
(11-04-2019)
Restitution Debt

- (1) The amount of restitution ordered payable to the Service is a liability, and once that liability is assessed by the Service there are effectively two means for collection, one judicial and one administrative. The liability itself, however, cannot be collected in full more than once.
 - a. The restitution liability is a judgment subject to collection by the Department of Justice Financial Litigation Unit (DOJ FLU). This restitution liability may be collected in accordance with the practices and procedures for the enforcement of a civil judgment. See IRM 25.3, *Litigation and Judgments*.
 - b. The Service also has the ability to use its administrative collection tools to satisfy the restitution liability by making a restitution-based assessment (RBA). Making this assessment allows the Service to collect the amount of the restitution liability in the same manner as if it was a tax. This means that administrative collection actions under the IRC may be used to collect the RBA.
- (2) Although the IRS can assess and collect restitution under IRC § 6201(a)(4), the restitution judgment under Title 18 does not cease to exist following the assessment. The DOJ FLU can still rely on the collection procedures provided in Title 18 to collect the restitution judgment. The DOJ's efforts to collect the restitution judgment and the Service's ability to collect the RBA administratively, are parallel, non-exclusive means of collection.
- (3) In order to ensure the full amount is only collected once, there must be close coordination between IRS Collection and the DOJ FLU. Advisory has responsibility for this coordination.

- (4) IRS may conduct a civil examination of the same tax liability on which restitution was based. Such an examination may result in the assessment of a deficiency based on that examination. Also, a taxpayer may file a delinquent return showing tax for which criminal restitution was ordered. In either case the RBA and the other assessment will duplicate each other in whole or in part; however, they may be collected only once.

5.1.5.16
(11-04-2019)

**Advisory
Responsibilities -
Probation and
Restitution Cases**

- (1) Advisory is responsible for monitoring and coordinating actions on probation and restitution cases. Advisory's responsibilities include:
- monitoring all cases with IRS-related conditions of probation and following up on any Other Investigations issued to the field
 - coordinating civil actions on collection of restitution cases and providing advice and guidance
 - coordinating civil enforcement actions with DOJ FLU
 - exchanging information with CI and TS to reconcile the status and actions pending in all probation cases on an annual basis..
 - maintaining case files and inventory for post-probation and non-probation restitution cases and providing guidance regarding collection of RBAs and restitution judgments.
- (2) The conditions of probation and restitution ordered are set forth in a document signed by the judge called a Judgment and Commitment Order. CI will use Form 13308, *Criminal Investigation Closing Report*, to transmit the criminal case judgment and to notify the civil functions that the criminal case has concluded. CI will provide Form 14104, *Notification of Court Ordered Criminal Restitution Payable to IRS*, to indicate the amounts and periods for restitution ordered.
- (3) Examination will notify Advisory when an RBA has been made. During case research and analysis, advisors may also become aware of a new assessment by identifying the RBA on Integrated Data Retrieval System (IDRS), the ICS case history, or when contacted for assistance.
- (4) Upon notification of a new probation or restitution case Advisory will take the following actions no later than ten (10) business days after receipt of the notification:
- Record the date on which the closing package is received from CI and ensure that all necessary documents are included in the package.
 - Complete Form 13308, Part C - Advisory Probation Liaison (Collection), acknowledging receipt date and Field Collection Assignment (if applicable). Forward a copy via fax or secure e-mail to the CI Field Office Coordinator and the local Fraud Technical Advisor.
 - If additional information is required, request it from CI.
 - If the TC 914 has not been released, coordinate with CI to have it released. For all cases involving conditions of probation, the posting of TC 910 by CI will be verified using CC ENMOD, and any necessary coordination with CI will be completed.
 - Create a new Non-Field Other Investigation (NF OI) using action code 182 (Probation).
 - Create a new NF OI for restitution using action code 180 if there is restitution ordered and/or assessed.

- Conduct initial case analysis and enter pertinent information from the Judgment and Commitment Order, Form 13308, and Form 14104 to ICS case history.
- Determine the Conditional Probation Expiration Date as provided in IRM 5.1.5.16.3, below.
- Review the conditions of probation and determine what civil actions need to be taken and the timing of those actions.

Note: Do not use ENTITY subcode 913, "Restitution". This subcode is for use only by Centralized Case Processing. Refer to IRM 5.3.1.2.3 for ENTITY case codes and subcodes.

- (5) The civil actions to be taken on probation and restitution cases and the timing of those actions will depend upon the facts and circumstances of the case. The following table provides some of the more common scenarios and corresponding actions that should be taken:

If ...	Then ...
There are RBAs, other tax assessments, or delinquent returns	An OI will be issued to the field requesting assignment and a revenue officer investigation.
If civil tax assessments, including RBAs, are subsequently made by Exam	An OI will be issued to the field requesting assignment and a revenue officer investigation.
There are no conditions of probation relating to the IRS except for the payment of court ordered restitution	Determine when restitution payments are to commence. If the defendant is incarcerated and making nominal restitution payments, monitor the projected release date.
There are no outstanding civil tax assessments against the defendant	Continue to monitor the case for compliance with any IRS-related terms of probation, such as the requirement to timely file and pay taxes.

- (6) While administrative collection action may not be taken to collect court ordered restitution payments, information about administrative action to collect RBAs and information regarding the defendant's compliance with a court order to pay restitution to the IRS must be provided to the U.S. Probation Office, and the collectibility of such amounts must be provided to the Financial Litigation Unit of the U.S. Attorney's Office when requested. See IRM 5.1.5.22, *Disclosure of Return Information to the Probation Officer*, below, regarding the disclosure of information to U.S. Probation.
- (7) For cases where there is no revenue officer assignment, the advisor will conduct a yearly compliance check (e.g. determine the need for an OI to the field to request assignment to a revenue officer to collect an RBA, address a new liability that has been assessed, or secure a delinquent return).

5.1.5.16.1
(10-06-2017)
**Issuing Other
Investigations (OI)**

- (1) Advisors will issue OIs to the field group to request investigations on probation and restitution cases when the conditions described above are present or when the advisor becomes aware that a restitution-based assessment has been made.
- (2) Before issuing an OI, determine whether the investigation should be conducted by a general program field group or by an Abusive Tax Avoidance Transaction (ATAT) group. If the case contains ATAT criteria, issue the OI to the ATAT group. See IRM 5.1.5.16.2, *Issuing Other Investigations to Abusive Tax Avoidance Transaction Collection Groups*.
- (3) RBAs may be in notice status, suspended status, or Bal Due status. The RBA will generally contain a STAUP to suspend the module for nine weeks following assessment. This suspends systemic notice and assignment and allows time for coordination of information and assignment. For field OIs:
 - a. If the RBA is suspended by a STAUP or in notice status, the OI should be issued to the group designation hold file XX00 according to geographic assignment. Instruct the field group to accelerate and assign the module for field investigation.
 - b. If the RBA is already in status 26 the OI should be issued to the revenue officer that has the case assignment. Instruct the field group to coordinate collection activities with Advisory.
- (4) The advisor should include pertinent information with the OI request. The OI request should contain the following:
 - Recommended actions to be taken.
 - Relevant information from case file documents and forms including: the Judgment & Commitment Order, Form 13308, and Form 14104.
 - Contact information if it is determined the revenue officer will need to make direct contact with the Special Agent, Fraud Suspense Coordinator, revenue agent, probation officer, or the Department of Justice Financial Litigation Unit (DOJ FLU).
 - Information about the taxpayer's prison term and location where serving the sentence.
 - Information about DOJ's collection of the judgment and results of any coordination between Advisory and DOJ or the DOJ FLU.
- (5) The outgoing OI may be closed once the module(s) have been accelerated and the case assigned to a revenue officer. Advisors will retain open NF OIs for the probation and/or restitution Advisory case.

5.1.5.16.2
(03-16-2016)
**Issuing Other
Investigations (OI) to
Abusive Tax Avoidance
Transaction (ATAT)
Collection Groups**

- (1) In highly technical and specialized cases, assignment to an Abusive Tax Avoidance Transaction (ATAT) collection group will be warranted.
- (2) The advisor will review all data available including, but not limited to, the Criminal Investigation Closing Report, Judgment and Commitment Order, and ICS case history and sub code. An OI will be issued to the appropriate Collection ATAT group no later than ten business days after determining if one or more of the following criteria are met and actions are needed by the field:
 - The defendant is a promoter.
 - The defendant is an abusive preparer.
 - Established or archived case on ICS is coded with ATAT sub code 309 through 329.

- Indication of assets located offshore.
- Indication of complex forms of asset ownership utilizing multiple-layered entities and/or nominee or alter ego entities.

Exception: Advisory OIs requesting only NFTL filing will not be sent to ATAT groups. These OIs should be sent to general program field groups even if other ATAT criteria are met.

- (3) If there is uncertainty as to whether the OI should be issued to an ATAT group, the advisor should contact the Collection ATAT Coordinator for guidance. A list of ATAT Coordinators can be found at <http://mysbse.web.irs.gov/Collection/toolsprocesses/CollATAT/contacts/19487.aspx>.

5.1.5.16.3
(11-04-2019)

The Conditional Probation Expiration Date

- (1) The Conditional Probation Expiration Date is the date on which the defendant's term of probation ends.
- (2) Noncompliance with the terms of probation must be reported to court prior to this date, otherwise no action can be taken. In order for corrective action to be taken, noncompliance should be reported as soon as it is detected. Additionally, noncompliance with IRS-related conditions of probation must be reported at a minimum of 180 calendar days before the Conditional Probation Expiration Date. Therefore, investigation for this memorandum must be complete prior to that date. See IRM 5.1.5.20.1, *The 180-Day Memorandum*.
- (3) The Conditional Probation Expiration Date is generally calculated as follows:
- Starting date: date of sentence or court ordered date of surrender
 - Add: prison term
 - Add: period of supervised release or probation
 - Subtract: 1 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.

5.1.5.16.4
(11-04-2019)

Monitoring the Conditional Probation Expiration Date

- (1) In the federal system, defendants may receive a reduction of their sentence if they comply with certain requirements or participate in certain designated programs while in custody.
- (2) This reduction of time spent incarcerated will impact the calculation of the Conditional Probation Expiration Date.
- (3) To determine whether the Conditional Probation Expiration Date has changed due to the defendant receiving a reduced sentence or as a result of other judicial action, Advisory should periodically check the defendant's projected release date on the Bureau of Prisons web site: <https://www.bop.gov/>. Early termination of supervised release may also impact the Conditional Probation Expiration Date. Advisory will also review PACER at <https://pacer.gov/> to determine whether the taxpayer's period of supervised release was terminated early by the courts. The dates should be checked a minimum of once a year during the defendant's period of incarceration and supervised release.
- (4) If it is discovered that the defendant's projected release date has changed, Advisory will notify Criminal Investigation and other IRS employees who are assigned to or monitoring the case.

5.1.5.17
(11-04-2019)
**Field Investigations -
Probation and
Restitution Cases**

- (1) Field groups may receive OIs issued by Advisory requesting field investigations on probation and restitution cases, or may receive systemic assignment of RBAs.
 - (2) Revenue officers may be required to conduct collection investigations in probation and restitution cases. A field investigation may be requested on a probation case where there is a judgment or conditions of probation but no assessed liability. Generally, OIs will be issued to a revenue officer in the following circumstances:
 - RBAs have been or will be made
 - other tax liabilities have been assessed against the defendant that may be collected by administrative collection action
 - civil tax assessments are made against the defendant pursuant to a plea agreement or pursuant to a civil examination after the criminal case and a collection determination or collection action is warranted
 - the defendant is ordered to pay restitution to the IRS as a condition of supervised release and payments are to begin immediately
 - the defendant is ordered to pay restitution to the IRS as a condition of probation and there are indications that the defendant has the assets to make such payments even though he or she is incarcerated
 - the defendant may not be in compliance with conditions of probation
 - delinquent returns need to be secured.
 - (3) OIs from Advisory requesting acceleration and T-sign of RBA module(s) are nondiscretionary for revenue officer field groups. The assignment must take place within the time frames set forth in IRM 5.1.8, *Courtesy Investigations*.
 - (4) If there are assessed liabilities associated with the incoming OI, the field group will T-sign the case to the appropriate revenue officer and accelerate any associated modules. For RBA modules, add "Restitution" to the ICS program name field if the period of probation or supervised relief is open. (This will systemically block input of currently-not-collectible, unable to locate/unable to contact closing codes to RBA modules.)
- Note:** Do not use ENTITY subcode 913, "Restitution". This subcode is for use only by Centralized Case Processing. Refer to IRM 5.3.1.2.3, *Case Codes and Subcodes*, for ENTITY case codes and subcode definitions.
- (5) The OI may be closed when the balance due case is assigned and RBA modules are in status 26. If there are no associated assessed modules, the OI will be kept open until field actions are completed.
 - (6) RBAs will not be assigned to the queue. Other balance due and delinquent return modules subject to conditions of probation will not be assigned to the queue without a collection determination on assessed modules and coordination through Advisory with Examination on any unfiled periods.

5.1.5.17.1
(10-06-2017)
**Collection Investigations
in Probation and
Restitution Cases**

- (1) When a collection investigation is requested, revenue officers will take the following actions:
 - a. Review information received from Advisory and any available ICS history. If a revenue officer determines a need for additional information or copies of forms and documents from the Advisory case file, make a request to

the advisor assigned the NF OI. See IRM 5.1.5.16.1, *Issuing Other Investigations*.

- b. Contact the advisor if the history indicates any activities are taking place or planned by the Department of Justice to collect the restitution judgment.
- c. Conduct a compliance check and determine whether the taxpayer is in compliance with tax obligations and conditions of probation, if different.
- d. Determine the taxpayer's assets and income, using the Collection Information Statement as an information source.
- e. Verify information provided by the taxpayer.
- f. In coordination with Advisory and the Department of Justice, determine what, if any, civil enforcement actions may be taken to collect outstanding tax assessments.
- g. Carry out any specific instructions listed on the OI, such as requesting a Notice of Federal Tax Lien.

(2) Taxpayers must be advised:

- of the specific IRS-related conditions of their probation, including any requirements to file tax returns, pay outstanding tax liabilities, and/or pay restitution to the IRS
- that their compliance with the conditions of probation will be monitored and any instances of noncompliance will be reported to the courts
- that inability to pay situations will be reported to the courts for evaluation as a potential violation of the conditions of probation.

Note: Letter 4015 may be used by revenue officers in appropriate circumstances to inform defendants of their responsibilities.

5.1.5.18
(11-04-2019)
**Collection Actions on
Cases with
Restitution-Based
Assessments (RBA)**

- (1) Cases with RBAs will generally be worked in the same manner as other balance due cases. Administrative actions to collect RBAs are permitted by law once assessment and notice requirements have been met.
- (2) Revenue officers will contact an advisor prior to taking administrative enforcement action to collect RBAs. The advisor is responsible for coordinating civil actions with the (DOJ FLU).
- (3) The CSED for most RBAs is ten years from the assessment date. Conditions that extend the CSED dates on other balance due cases extend the CSED dates of RBAs in the same way. The IRS may file a suit to reduce the restitution assessment to judgment in order to extend the ten-year period under IRC § 6502.
- (4) There is an exception to the ten-year CSED in some RBA cases. When a defendant is found guilty as a result of trial (**not** pursuant to a plea agreement) and restitution is ordered solely as a condition of the taxpayer's probation or supervised release, the IRS can only administratively collect during the period of probation or supervised release. In this situation, the end date of the period of probation or supervised release becomes the CSED, (*United States v. Westbrook*, 858 F. 3d 317, 328 (5th Cir. 2017)). When a limited period of enforceability applies under this exception, the IRS cannot file suit to reduce the restitution-based assessment to judgment in order to extend the CSED.

Note: Field Collection will contact the assigned advisor for all guidance needed on cases with an established limited period of enforceability or where a limited period of enforceability issue has been raised.

- (5) When Advisory is informed that an assessed RBA may be subject to a limited period of enforceability for administrative collection, Advisory will take the following actions:
- a. Review the Judgment and Commitment Order to confirm that the defendant was convicted/found guilty at trial (not as the result of a plea agreement) and that restitution was ordered solely as a condition of probation or supervised release. If there is a question concerning whether the restitution is solely a condition of probation or supervised release, seek guidance from local SBSE Counsel and proceed as directed. Local SBSE Counsel will coordinate and elevate the issue if necessary.
 - b. If the review confirms that a limited period of enforceability is applicable, confirm that all periods listed on Form 14104, *Notification of Court Ordered Criminal Restitution Payable to IRS*, have been assessed. If not, contact Examination Technical Services (**SBSE Tech Svs Criminal Restitution*) for a status update.
 - c. Confirm the date of the defendant's completion of probation/supervised release via either the Bureau of Prisons website, <https://www.bop.gov/>, or by contacting the assigned Department of Justice probation officer.
 - d. Prepare Form 4844, *Request for Terminal Action*, to update the CSED for all RBA periods listed on Form 14104 using Transaction Code 550 Definor Code 10, Other. Make the adjusted CSED date equal to the last day of the defendant's period of probation/supervised release.
 - e. Document the ICS case history with the basis for the CSED change ("CSED updated to reflect limited period of enforceability for restitution ordered solely as a condition of probation/supervised release.") and calculation, per IRM 5.1.19.1.1(4), *Collection Statute Date Review*.
 - f. Submit Form 4844, with the associated Judgment and Commitment Order and Form 14104, to the RBA Advisory group manager for review and approval. The group manager will review and forward to **SBSE CCS GCP WEST 2* for processing. Include "TC550 CSED" in the subject line of the email transmitting the Form 4844. If there is a question concerning applicability of a limited period of enforceability, or the exact time frame for period of enforceability, Advisory will seek guidance from SBSE Counsel and proceed as directed.
 - g. Send an informational copy of the approved Form 4844 to Campus Collection Operations RBA group organizational mailbox, **SBSE Ogden RBA*.
 - h. Monitor the case on a monthly basis for any changes to the end-date of defendant's period of probation/supervised release. If the terms of the defendant's period of probation/supervised release change (either through early termination or extension), request a new update to the CSED.

Cases with potentially limited period of enforceability may be identified and forwarded for determination from any source, e.g., Collection, Examination, Counsel, Appeals, the taxpayer or taxpayer's representative, etc.

- (6) Examination Technical Services may receive RBA files which cannot be assessed until the taxpayer has been released from prison and begun a period

of court-ordered supervised release (cases with limited periods of enforceability). Examination may request case monitoring support from Collection Advisory on these cases. Requests for monitoring support will be received in the Advisory Centralized Restitution Unit organizational email box, **SBSE EEF Dallas Restitution*. Upon notification of a request for monitoring support Advisory will initiate the following actions no later than ten (10) business days after receipt:

- a. Create a new NF OI action code 180 (Restitution) if one is not currently assigned.
 - b. Establish follow-ups to monitor the taxpayer's prison release date on a monthly basis. Monitoring may be conducted through the Bureau of Prison website or by contacting the assigned Department of Justice probation officer.
 - c. Inform Examination Technical Services of the taxpayer's scheduled prison release date via e-mail, **SBSE Tech Svs Criminal Restitution* a minimum of 90 days (but not more than 120 days) prior to the scheduled release.
 - d. Continue to monitor the case on a monthly basis. Advisory will notify Examination Technical Services via e-mail within five (5) business days if there is any change to the scheduled prison release date.
- (7) All notice requirements must be met before administrative collection activity can take place. Revenue officers must analyze the case to determine what notices should be manually issued, since routine systemic notice delivery will generally be suspended after first notice.

Note: The taxpayer will receive as systemically generated *Notice and Demand* (Notice CP 94, indicated by TC 971, AC 806.) Prior to January 2015, **Notice and Demand** was issued using Letter 4885 and systemically issued using Notice CP 21.

- (8) RBA liabilities do not arise from a tax form. When manually issuing notices, forms, or letters, revenue officers should ensure that any *Form Number* or *Kind of Tax* field reflects one of the following terms:
- Restitution
 - RBA
 - Restitution-Based Assessment
 - Restitution Assessment

Note: When using the ICS Templates menu, if ICS auto-populates a notice, form, or letter *Form Number* field with 1040 for an RBA MFT 31 module, the revenue officer must manually edit to one of the listed terms.

- (9) A new Form 2848, *Power of Attorney and Declaration of Representative*, will be secured in RBA cases. Enter any of the following terms in Section 3 of the form:
- Restitution Assessment
 - Restitution-Based Assessment
 - RBA

No further description of the tax form number, year(s), or period(s) is required since the RBA liability does not arise from a tax form.

- (10) The taxpayer is entitled to Collection Due Process appeal rights under IRC § 6320 and § 6330. The assessed amount, however, may not be challenged based on the existence or amount of the underlying tax liability in any proceeding under the IRC.

Note: See IRM 5.1.9, *Field Collecting Procedures, Collection Appeal Rights*.

- (11) Taxpayers have a set of fundamental rights called the Taxpayer Bill of Rights (<https://www.irs.gov/taxpayer-bill-of-rights>), which includes the right to receive assistance from the Taxpayer Advocate Service under certain circumstances. See Publication 1(Pub 1), *Your Rights as a Taxpayer*, for more information. All Taxpayer Advocate Service case criteria can apply to taxpayers with RBAs. See IRM 13.1.7, *Taxpayer Advocate Service (TAS) Case Criteria*.

5.1.5.18.1
(03-16-2016)
**Coordination on
Probation and
Restitution Cases**

- (1) If enforcement action is being considered, revenue officers will contact the advisor that issued the OI prior to taking enforcement action. If the RBA case is assigned systemically and an OI has not been issued by Advisory, the revenue officer should contact the Advisory Centralized Restitution Unit at *SBSE EEF Dallas Restitution and request Advisory assistance in coordinating case activities.
- (2) The advisor will coordinate with the special agent assigned to the case and evaluate any asset information developed by Criminal Investigation in the course of their investigation and provided in the closing package. The revenue officer may contact the special agent directly if it is agreed by the revenue officer and the advisor that such communication will facilitate case resolution.
- (3) If enforcement activity is being considered, the advisor will discuss the case with the DOJ FLU to coordinate collection activities. Coordination is necessary because the DOJ has the ability to collect the restitution judgment while the Service may administratively collect the RBA.

Caution: If not coordinated, actions could result in potential double collection, conflict of jurisdictions, or communications that might be confusing to the taxpayer.

- (4) The local FTA may also be contacted, especially if the criminal case was the direct result of a fraud referral. The FTA may have valuable knowledge of the taxpayer, assets or income that may assist with the collection determination. The FTA can also provide a copy of the Form 2797, *Referral Report of Potential Criminal Fraud Cases*, if the case originated as a referral.
- (5) Revenue officers will also determine the status of any examinations to determine the disposition of any unfiled returns subject to conditions of probation and include any proposed deficiencies in the total liability and case disposition.

5.1.5.18.2
(03-16-2016)
**Notice of Federal Tax
Lien (NFTL) Filing on
Restitution-Based
Assessments (RBA)**

- (1) The same determination and filing criteria apply when filing a NFTL for the statutory liens of unpaid RBAs that apply to other balance due accounts.
- (2) NFTLs for these statutory liens:
- contain special wording to indicate the nature of the assessment(s),
 - can be generated through the Automated Lien System (ALS), and
 - cannot be requested through the ICS.

Note: In rare situations, circumstances may necessitate that the NFTL be manually prepared and hand-carried for filing. Use the ICS Form 668(Y)(c) template to manually prepare the NFTL. See IRM 5.12.7.7.4(7).

- (3) To request a NFTL for an RBA, complete Form 12636, *Request for Filing or Refiling Notice of Federal Tax Lien*, and forward it via secure e-mail to the Centralized Lien Operation (CLO) for input to ALS. In the case of immediate filing, a copy of the manually-prepared NFTL must be provided to CLO.
- (4) For RBA NFTLs printed and filed by CLO, the taxpayer's Collection Due Process (CDP) notice is systemically issued. For those manually prepared, the requester is responsible for the issuance of the CDP notice.
- (5) See IRM 5.12.7.7.4, *Restitution-Based Assessment NFTLs* for guidance on preparing NFTLs on RBA cases.

5.1.5.18.3
(03-16-2016)
**Financial Analysis in
Cases with
Restitution-Based
Assessments (RBA)**

- (1) RBAs may be closed as CNC, hardship by the Field Collection or Advisory.
- (2) The taxpayer is responsible for making any required payments as directed by the court to satisfy the criminal restitution order. These are court ordered payments, and are allowable expenses.
- (3) When the court orders restitution paid to federal and non-federal victims, the Service will not pursue enforced collection actions until the non-federal victims are paid in full. If there is no collection potential because non-federal victims are to be paid first, the case may be closed as a CNC hardship. Determine whether a mandatory follow-up is warranted based on the information in the court order. Revenue officers should consult Advisory for assistance in determining how and when to resume collection.

Note: Restitution payments made to other victims pursuant to a court order are allowable expenses. See IRM 5.15.1.10, *Financial Analysis Handbook, Other Expenses*.

- (4) RBAs should not be closed as unable to contact (UTC) or unable to locate (UTL) while the taxpayer is under supervised release or on probation. If the taxpayer cannot be contacted or located, coordination with the U.S. Probation Office through Advisory should take place. If the taxpayer is uncooperative or not in compliance with conditions of probation, follow the guidelines in IRM 5.1.5.23, *Addressing Noncompliance*.
- (5) If the taxpayer is not under supervised release or on probation, the account may be reported UTL or UTC. If the "Restitution" program name is present on ICS, request through the group manager that it be removed. The "Restitution" program name, if present, will block UTL and UTC closures.

5.1.5.18.4
(10-06-2017)
**Levy and Seizure on
Restitution-Based
Assessments (RBA)**

- (1) Administrative collection of RBAs through levy and seizure is permissible. Decisions to issue a levy or conduct a seizure must be made on a case-by-case basis and coordinated with the DOJ through Advisory. This is because the DOJ may be taking action to collect the restitution judgment.
- (2) Ensure all notice requirements have been met. Systemic notices are not generally issued on RBA accounts.

Reminder: The taxpayer is entitled to Collection Due Process appeal rights. See IRM 5.1.9, *Field Collecting Procedures, Collection Appeal Rights*.

- (3) Some accounts may have potentially duplicate assessments, such as a TC 300 audit assessment and an RBA for the same underlying tax liability. As with trust fund recovery penalties, these accounts are reconciled in Campus units, and payments are cross-referenced to prevent over-collection of the liability. See IRM 5.1.5.19.2, *Cross-Referencing and Reconciliation of Payments*, below. Potentially duplicate assessments will normally be listed on the Notice of Levy if proper notices have been served because these amounts will not be over-collected. Revenue officers may contact the advisor to determine whether to seek an advisory opinion from Area Counsel before proceeding if warranted by the facts and circumstances of the case.
- (4) RBA liabilities do not arise from a tax form. When issuing Notice of Levy, revenue officers must ensure that the **Kind of Tax** field for RBA modules reflects one of the following terms:
 - Restitution
 - RBA
 - Restitution-Based Assessment
 - Restitution Assessment

Note: When using the ICS Templates menu, if ICS auto-populates a Notice of Levy *Kind of Tax* field with 1040 for an RBA MFT 31 module, the revenue officer must manually edit to one of the listed terms.

5.1.5.18.5
(10-06-2017)
**Installment Agreements
(IA) and Restitution**

- (1) The IRS may not enter into an IA that would ultimately result in the taxpayer paying an amount less than, or less frequently than, a court ordered restitution payment plan.
- (2) The IRS should enter into an IA only if it meets the following requirements:
 - the entire amount of restitution ordered is satisfied at the conclusion of the IA,
 - the minimum periodic payment under the IA is at least equal to the minimum periodic payment under the court ordered restitution plan, and
 - the payment period under the IA is no longer than the payment period of the court ordered restitution plan.
- (3) Restrictions apply to IAs that include RBAs. See IRM 5.14.4.7, *Establishing Installment Agreements on Restitution-Based Assessments (RBA) and Related Civil Assessments*, for detailed guidance.

5.1.5.18.6
(11-04-2019)
**Offers in Compromise
(OIC) and Restitution**

- (1) The IRS does not have the authority to compromise court-ordered restitution or Restitution-Based Assessments.
- (2) The IRS may consider an OIC to pay liabilities other than restitution and RBAs, including civil tax, penalties, and interest for the same tax periods for which restitution was ordered, even if the restitution amount due has not been paid or will not be paid within the terms of the OIC.

Note: Since restitution assessments may not be compromised by the IRS, Form 656, Offer in Compromise, must not include any restitution amounts due.

- (3) The defendant must notify the court and the Department of Justice of any material change in the defendant's economic circumstances that might affect the defendant's ability to pay. The United States may also notify the court of a change in the defendant's economic circumstances. See IRM 5.8.4.23.2, *Offers in Compromise Submitted that Include Restitution*.

5.1.5.18.7
(12-16-2014)
**Insolvency in Cases with
Restitution-Based
Assessments (RBA)**

- (1) Taxpayers with RBAs can file for bankruptcy protection under any appropriate section of the bankruptcy code if they meet the legal requirements. While tax assessments for the years related to the assessments may be dischargeable, RBA assessments are not.
- (2) When a revenue officer or advisor learns that a taxpayer against whom an RBA has been made has filed bankruptcy, the revenue officer or advisor will contact the Centralized Insolvency Operation and inform them that the bankruptcy involves an RBA. Provide this information even if the IRS has otherwise received notice of the bankruptcy case and the case has been opened on the Automated Insolvency System. RBA bankruptcy cases will be worked by Field Insolvency. See IRM 5.9, *Bankruptcy and Other Insolvencies*, for additional information about restitution and bankruptcy.
- (3) Advisors will serve as a resource for Insolvency caseworkers needing assistance with RBA cases.

5.1.5.18.8
(10-06-2017)
**Adjustments to
Restitution-Based
Assessments (RBA)**

- (1) RBA modules can only be adjusted under specific circumstances:
- The court issues a revised restitution order amending the amount a defendant is ordered to pay in restitution
 - An error was made in the original RBA (e.g., incorrect amount assessed, incorrect year assessed, incorrect taxpayer assessed)
- (2) Examination Technical Services is responsible for establishing and adjusting all RBA accounts, including preparation and submission of Form 3870, *Request for Adjustment*. Revenue officers should direct inquiries regarding all proposed RBA account adjustments to the centralized mailbox at **SBSE Tech Svs Criminal Restitution* and await guidance before proceeding. Revenue officers should not submit Form 3870 for RBA modules to Collection Centralized Case Processing.

5.1.5.19
(12-16-2014)
Restitution Payments

- (1) The manner in which payments of restitution debt are handled will depend on whether:
- the payment is toward a restitution-based assessment or a court ordered restitution judgment, and
 - the payment is toward federal restitution or non-federal restitution.

5.1.5.19.1
(12-16-2014)
**Payments of
Restitution-Based
Assessments (RBA)**

- (1) Payments toward RBA accounts are posted using established designated payment codes. See IRM 5.1.2, *Remittances, Form 809 and Designated Payments*.
- (2) Payments received as a result of collection enforcement action to collect RBAs are involuntary payments and may be applied in the best interest of the government.

5.1.5.19.2
(10-06-2017)

**Cross-Referencing and
Reconciliation of
Payments**

- (1) When multiple restitution debts stem from the same underlying tax liability, the full amount can only be collected once. Therefore, any payments that wholly or in part satisfy the RBA must also be applied against the underlying tax liability for the same type of tax and tax periods (duplicate civil and/or codefendant assessments), provided that the RBA relates to that underlying tax liability.
- (2) The defendant ordered to pay restitution may be one or more of, but is not limited to:
 - individual taxpayer
 - spouse on joint account
 - officer or employee of a corporation
 - partner or employee of a partnership
 - employee of a sole proprietorship
 - return preparer or client
 - tax shelter promoter.
- (3) The SB/SE Campus Collection Operations Restitution Unit in Ogden is responsible for:
 - monitoring RBA accounts
 - cross-referencing payments and credits
 - reconciling RBA accounts to ensure potential duplicate liabilities are only collected once
 - responding to inquiries related to these accounts.
- (4) To prevent duplicate collection, the Campus RBA Unit will cross-reference any payments made against the RBA to related duplicate assessments. Duplicate assessments include the RBA made on the MFT 31 account, and civil tax and or fraud penalties assessed on each respective parties' underlying tax account.
- (5) Payments and credits are only cross-referenced until the duplicate assessment and related penalties and interest are paid.
- (6) For RBA modules in Non Master File (NMF) follow the guidelines for posting payments found in IRM 5.1.2.5.5, *Inactive Account*. In addition, when a revenue officer posts a payment to an RBA module in NMF, the revenue officer will forward a copy of the payment posting voucher(s) via secure e-mail to *SBSE Ogden RBA. Forwarding a copy of the payment voucher to the Ogden Restitution Unit is necessary to ensure timely cross-referencing and reconciliation of payments.
- (7) IRM 5.19.23, *Liability Collection, Restitution-Based Assessments Processing*, contains detailed information about RBA cross-referencing and payment reconciliation. Field Collection employees needing assistance resolving payment and credit reconciliation issues may contact the Ogden Campus RBA Unit by sending an inquiry via secure e-mail to *SBSE Ogden RBA. For RBA modules in NMF but not on IDRS, revenue officers and advisors needing posted transaction and balance due information can request Automated Non Master File System transcripts from the Ogden Campus RBA Unit via secure e-mail inquiry.

5.1.5.19.3
(11-04-2019)
**Court Ordered
Restitution Payment
Processing**

- (1) Judgment and Commitment Orders (J&Cs) normally specify that defendants are to submit restitution payments to the office of the clerk of the district court in the district in which the defendant was sentenced. This will generally include restitution payments that are required to be paid to the IRS. Field Collection processing of such payments should be rare.
- (2) After receiving, processing and recording restitution payments made by defendants, the clerk of court will forward the money to the victim(s) listed in the restitution order.
- (3) All court ordered restitution payments to the IRS are processed by the Kansas City Submission Processing Center (SPC) at the following address:

Department of Treasury

Internal Revenue Service

Attn: DOJ/Criminal Restitution, Mail Stop 6261 P-6

333 West Pershing Road

Kansas City, MO 64108

- (4) Any court ordered restitution payments received at sites other than the Kansas City SPC must be transshipped via overnight traceable method to the address in paragraph (3), above.
- (5) In order for restitution payments to be linked to the defendant making the payment, identifying information, if available, such as the defendant's full name, social security number or Taxpayer Identification Number, the tax year or years for which restitution has been ordered, and a statement that the payment is being made pursuant to a restitution order, should be included with the payment and forwarded to the Kansas City SPC. The tax year(s) for which restitution has been ordered may or may not be included in the J&C.
- (6) Payments of court ordered restitution for judgments entered after August 16, 2010 will be posted using designated payment code (DPC) 26. Court ordered restitution for judgments entered August 16, 2010 and earlier will be posted using DPC 08.
- (7) Contact the Kansas City SPC at **W&I Criminal Restitution* if there are questions regarding the receipt and reconciliation of court ordered restitution payments.

5.1.5.19.4
(10-06-2017)
**State Court Ordered
Restitution Payments**

- (1) In connection with prosecutions for identity theft, refund schemes, and tax evasion, state courts may order defendants to pay restitution to the IRS.
- (2) State or local officials may contact IRS to ask where to send restitution payments. Collection personnel receiving inquiries from state or local governments regarding where to send payments should advise them to send payments to the following address:

Department of Treasury

Internal Revenue Service

Attn: DOJ/Criminal Restitution, Mail Stop 6261 P-6

333 West Pershing Road

Kansas City, MO 64108

- (3) Revenue officers or advisors receiving a state ordered restitution payment will transmit the payment using Form 3210, *Document Transmittal*, to the above address. Collection personnel needing information or assistance regarding these payments may contact the State Restitution Special Services Team via the secure mailbox at **W&I Criminal Restitution*.
- (4) When the State Restitution Team receives a payment with insufficient information, they may request assistance from Advisory to secure additional information. Advisory will contact the sender to obtain the additional information, which may include any or all of the following:
 - a. A copy of the court order (or the state equivalent).
 - b. All necessary information on the check, including: the case number, the defendant's name, and "State Restitution" written on the check.
 - c. A copy of the indictment, if possible.
 - d. A contact name and number for any questions.

The advisor will send the information to the Special Services Team by secure e-mail or by mail to the address above using Form 3210.

- (5) If there is already a Probation NF OI open, Advisory will not need to open an ICS module.

5.1.5.20
(12-16-2014)

**Noncompliance with
Conditions of Probation**

- (1) A variety of conditions may be imposed by the court as conditions of probation. Some of the more common IRS-related conditions of probation are:
 - cooperating with the IRS in a collection investigation or examination
 - filing past due and current tax returns
 - paying or making arrangements to pay past due taxes
 - paying restitution to the IRS
- (2) Lack of cooperation with the IRS includes:
 - failing to file returns or filing frivolous returns
 - failing to schedule or appear at scheduled appointments
 - failing to provide complete records in a timely manner
 - putting assets beyond the reach of the IRS, and
 - any actions causing unwarranted delays in resolving tax compliance issues.

5.1.5.20.1
(10-06-2017)
**The 180-Day
Memorandum**

- (1) A memorandum must be prepared and forwarded to CI SAC and CI Field Office Conditions of Probation Coordinator, with a copy to Exam Technical Services, in all cases where there are IRS-related conditions of probation and those conditions have not been met. The memorandum will be prepared by the advisor based upon information received from revenue officers who have been assigned to take actions on the case.
- (2) The memorandum must be sent 180 days prior to the Conditional Probation Expiration Date. See IRM 5.1.5.16.3, above.

Note: The requirement that a memorandum be provided no later than 180 days prior to the expiration of the probationary period does not mean that compliance with conditions of probation need not be monitored, and noncompliance not reported, throughout the probationary period.

- (3) The memorandum will include the following:
 - a statement that the defendant has not met the conditions of probation
 - the Conditional Probation Expiration Date
 - the specific conditions of probation relating to the IRS
 - actions taken or not taken by the defendant to comply with the conditions of probation
 - if there are outstanding tax liabilities, including restitution-based assessments, the defendant's efforts at paying the liabilities and whether or not such amounts are collectible
 - if restitution was awarded to the IRS as a condition of probation, whether the defendant paid the amount ordered
 - any relevant information regarding the defendant's cooperation with the IRS to comply with the conditions of probation
 - a statement addressing whether such failure was within the defendant's control
- (4) The advisor will update any controls being used to indicate the issuance of the memorandum sent to CI.

5.1.5.21
(12-16-2014)
**Reporting
Noncompliance with
Conditions of Probation**

- (1) When a determination is made that a defendant is not complying with the conditions of probation, this information must be immediately reported to Advisory. The advisor will report the noncompliance in accordance with disclosure laws.
- (2) Do not wait until 180 days before the expiration of the probation period to report any noncompliance. The requirement to report compliance or noncompliance with the conditions of probation 180 days prior to the expiration of the probation period is *in addition to* the requirement to report any noncompliance that is identified during the probation period.

5.1.5.22
(08-31-2010)
**Disclosure of Return
Information to the
Probation Officer**

- (1) IRC § 6103(h)(4) allows disclosure of returns and return information to a U.S. Probation Officer for the purposes of informing the court of any noncompliance during a defendant's probationary period under the following circumstances:
 - Information on return(s) must relate to a taxpayer convicted of a criminal tax violation.
 - A U.S. Probation Officer must be charged with the responsibility of determining whether such taxpayer is complying with the terms of probation that relate to the Internal Revenue Laws.

- Information on return(s) are limited to those years specified in the conditions of probation issued by the court, or to the conviction years and those years for which the taxpayer is placed on probation.
 - Disclosure of the returns and return information would not identify a confidential informant or seriously impair a civil or criminal tax investigation.
- (2) Where compliance with IRS-related conditions of probation in a *criminal tax case* is at issue, information regarding the years specified in the conditions of probation may be disclosed by the advisor directly to the probation officer. Information about other tax years generally may not be disclosed without the taxpayer's written consent unless the information is material for the court's consideration in revoking or extending probation or supervised release. If there are any questions as to whether the taxpayer was convicted of a criminal tax violation, request a copy of the Judgment and Commitment Order or other document from probation which clearly sets forth the conditions of probation and the offense(s) under which the taxpayer was convicted.
- (3) In probation cases where an advisor issues an OI to the field, the revenue officer assigned to the case may communicate directly with the probation officer as long as proof of the above required circumstances for disclosure under IRC § 6103(h)(4) has been obtained, or a written consent to disclosure has been provided. The revenue officer should coordinate with the advisor to ensure that direct communications with the probation officer are appropriate and to keep the advisor informed of the nature of the communications. In probation cases where an OI has not been issued to the field, any direct communications with probation officers by SB/SE Collection employees should be limited to the single points of contact for probation cases in Advisory.
- (4) In cases in which the taxpayer was convicted of a non-tax related crime, the IRS will only disclose taxpayer information if presented with a written taxpayer consent, such as a Form 8821, *Tax Information Authorization*. If the only information needed is verification that a taxpayer has not filed tax returns, instruct the probation officer to use Form 4506-T, *Request for Transcript of Tax Return*, which has a check box for requesting Verification of Nonfiling. Form 8821 may be used to obtain taxpayer consent in both tax and non-tax cases. However, ensure that the form has been filed with the appropriate IRS office within 120 days after the date it is signed by the taxpayer.

Note: Pub 4799, *Common Questions and Answers Regarding Interactions between the U.S. Probation Office and the Internal Revenue Service in Supervision Cases*, has been issued to provide information to probation officers regarding IRS procedures in probation cases. The publication provides additional information on how probation officers can obtain the information they need to determine a taxpayer's compliance with IRS-related conditions of probation.

5.1.5.23
(08-31-2010)
**Addressing
Noncompliance**

- (1) There are several actions that may be taken by the IRS when faced with an uncooperative and noncompliant defendant, such as:
- The special agent can meet with the probation officer and the defendant and explain to the defendant the possible consequences of his or her actions or inaction.
 - The advisor or revenue officer assigned to the case may also meet with the probation officer as long as disclosure requirements are met.

- The probation officer can be requested to attend meetings between IRS employees and the defendant to further define exactly what the defendant must do in order to demonstrate that he or she is cooperating with the IRS and attempting to fulfill the conditions of probation in good faith.

- (2) While it is the responsibility of the SAC to take whatever steps are necessary to initiate appropriate legal action in any instance where the taxpayer has failed to comply with the conditions of probation, CI and SBSE share joint responsibility in ensuring compliance with court orders. In order to ensure compliance with IRS-related conditions of probation, and to take appropriate actions to address noncompliance, the probation officer must be timely informed of incidents of noncompliance throughout the probation period.
- (3) Once noncompliance with IRS-related conditions of probation is identified, the advisor will notify the probation officer responsible for monitoring the taxpayer's compliance. The advisor will also keep CI apprised of any such communications along with the status of the taxpayer's compliance.

5.1.5.24
(12-16-2014)
Revocation of Probation

- (1) If the taxpayer is not complying with the conditions of probation, a determination may be made to seek revocation of probation. This determination is generally made by the probation officer and/or the U.S. Attorney's Office that prosecuted the case.
- (2) A taxpayer's noncompliance with IRS-related conditions of probation may serve as a basis, either alone or in conjunction with other violations, for seeking revocation of probation.

Note: Revocation of probation or supervised release can be a powerful tool in motivating a defendant to pay restitution. Because periods of probation or supervised release are often fairly short, difficulties may arise in timely seeking revocation based on the failure to make restitution payments. Thus, compliance should be closely monitored and noncompliance reported immediately upon discovery.

- (3) Once a decision to seek revocation has been made, the IRS must assist the probation officer and the prosecutor in obtaining or providing any necessary testimony and documentation.

5.1.5.25
(12-16-2014)
Actions When Taxpayer Relocates to Another State

- (1) When revenue officer investigation determines that the defendant moved to another state, the advisor will be notified of the new address and other relevant information.
- (2) In all cases, the name, telephone number and address of the new probation officer will be obtained.

5.1.5.26
(08-03-2009)
Default in Restitution Payments - Remedies

- (1) Upon a finding of default on a restitution payment, the court may
 - revoke the term of supervised release
 - modify a term of supervised release
 - re-sentence a defendant
 - hold the defendant in contempt of court
 - enter a restraining order or injunction
 - order the sale of the defendant's property

- accept a performance bond
- enter or adjust a payment schedule
- take any other action necessary to obtain compliance with the restitution order.

- (2) If a defendant is unable to make a good faith effort at repayment, he or she may seek modification of the restitution order. The court may also, if appropriate due to the economic circumstances of the defendant, order nominal periodic payments.

Note: The IRS does not have the authority to modify the terms of a restitution order.

5.1.5.27
(11-04-2019)

**Advisory Closing
Actions**

- (1) Probation/Supervised Release cases should not be closed before the end of the court-ordered period of probation/supervised release. Probation NF OI cases should be closed no later than 10 business days after:
- the conditions of probation have been met over the probation period
 - noncompliance with terms of probation have been identified and referred to Criminal Investigation and the probation period has expired
- (2) The advisor will periodically check (at least annually) whether the conditions of probation have been terminated early by the court. The case should be closed no later than 10 business days after learning that the conditions of probation were terminated by the court.
- (3) Enter history on ICS that describes the closing actions taken.
- (4) Close any open NF OI 182 on ICS.
- (5) Restitution OIs (NF OI 180) will remain open until the restitution judgment is satisfied.

5.1.5.28
(12-16-2014)

**Acknowledging IRS as a
Victim in Order to Seek
Restitution**

- (1) In connection with prosecutions for refund fraud schemes and other tax related crimes, federal, state, or local law enforcement agencies may request that the IRS acknowledge it has been a victim and may seek information on the amount of tax lost, for purposes of seeking an order of restitution at sentencing. Advisory is responsible for handling such requests.
- (2) Pursuant to section 6103(k)(6), the IRS may disclose return information to federal, state and local law enforcement agencies for the purpose of collecting unpaid tax liabilities, including erroneous refunds issued as a result of a refund fraud scheme. See IRM 11.3.21, *Disclosure of Official Information, Investigative Disclosure*.
- (3) Any Collection field employee receiving a request for acknowledgement that the IRS has been victimized or sustained a tax loss in non-IRS litigation circumstances will transmit the request using Form 3210, *Document Transmittal*, to the address listed below:

Internal Revenue Service

Attn: Collection Advisory

801 Broadway, MDP #53

Nashville, TN 37203

5.1.5.28.1
(12-16-2014)
**Acknowledging IRS as a
Victim - Advisory
Procedures**

- (1) The requesting agency may seek acknowledgement of IRS losses for the purpose of obtaining an order of restitution payable to the IRS. Upon receipt of the request, Advisory will open an NF OI on ICS using code 181.
- (2) The advisor will conduct research to determine whether there was a loss to the government by utilizing the following research tools :
 - a. Financial Crimes Enforcement Network Query: Provides subject information by name. It can be used to identify bank account information and whether U.S. Treasury checks and electronic deposits were made by the subject.
 - b. Public Access to Electronic Court Records (PACER): An electronic court information system allowing ready access to information on federal court cases.
 - c. IDRS: Command codes INOLE, IRPTRO, TXMOD, and RTVUE can help determine the subject's taxpayer identification number and help identify whether fraudulent returns are being filed by the subject.
 - d. Electronic Fraud Detection System (EFDS): Helps establish whether the subject has any tax returns flagged for fraudulent activity and provides contact information if there is a Criminal Investigation (CI) agent assigned to the case.
- (3) The advisor may contact the CI Scheme Development Center by e-mail at **CI-SDC Research*. The CI analyst will provide research assistance and can help determine if there is tax loss due to erroneously issued refunds.
- (4) Determine whether there are any assets in possession of the subject that would result in payment of part or all of the restitution to the IRS.
- (5) Analyze the information to determine whether fraudulent tax returns were filed and if the IRS sustained a loss.
- (6) If a loss was sustained, the advisor will prepare a letter on IRS letterhead for the signature of the Advisory Territory Manager requesting that restitution be ordered at the time of sentencing.
- (7) If a loss cannot be determined, a letter will be prepared stating that it could not be shown that the government sustained a loss.
- (8) Each response letter should only include:
 - the defendant's name with no other Personally Identifiable Information (PII)
 - a statement to confirm how the IRS was victimized based on documents publicly available as well as any police report information available
 - a statement that IRS is providing this letter as requested in order for restitution to be ordered payable to the IRS
 - the total loss in dollars sustained by the IRS
 - a request that a copy of the restitution order accompany any payment
 - a request that any payments be sent to the following address:

Department of the Treasury

Internal Revenue Service

Attn: DOJ/Criminal Restitution, Mail Stop 6261 P-6

333 West Pershing Road

Kansas City, MO 64108

- (9) Submit the response letter to the Advisory Territory Manager for signature. Once signed, the letter will be mailed to the requesting party with a copy retained for the case file.

Note: Advice may be requested from Area Counsel and/or Disclosure if necessary on a case-by-case basis.

- (10) The case file will include the request letter, the response letter, and any research that was performed by the advisor and CI. Document all actions in the ICS history. The NF OI can be closed after the letter has been sent and all actions completed and documented.