



# MANUAL TRANSMITTAL

Department of the Treasury  
Internal Revenue Service

5.17.4

SEPTEMBER 8, 2023

## EFFECTIVE DATE

(09-08-2023)

## PURPOSE

- (1) This transmits revised IRM 5.17.4, Legal Reference Guide for Revenue Officers, Suits by the United States.

## MATERIAL CHANGES

- (1) Editorial changes to update web addresses and references.

## EFFECT ON OTHER DOCUMENTS

This IRM supersedes IRM 5.17.4 dated March 03-2023.

## AUDIENCE

SB/SE Revenue Officers.

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5.17.4

Suits by the United States

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5.17.4.1  
(05-23-2019)  
**Program Scope and Objectives**

- (1) This IRM discusses the circumstances where judicial action can be initiated by the Internal Revenue Service (i.e. resulting in lawsuits brought by the United States). The determination of whether to use administrative or judicial collection processes depends upon the facts of a specific case. However, once the decision is made to proceed by way of a court action, collection personnel should move quickly and thoroughly to ensure its success. Because of the publicity that may accompany a court proceeding, the success of such an action cannot be measured only in the dollar amount of the tax collected. A timely and successful court action can have a positive impact on voluntary compliance.
- (2) **Purpose:** The purpose of this section is to outline some general characteristics and procedures followed in instituting and carrying out a lawsuit and some common types of lawsuits commenced by the United States for effecting or assisting in the collection of taxes.
- (3) **Audience:** This IRM is used by Collection employees recommending litigation by the government. Primarily Field Collection Revenue Officers and Advisory staff use this IRM when recommending suits to Counsel and the Department of Justice for affirmative litigation related to the types of actions discussed herein.
- (4) **Policy Owner:** Director, Collection Policy.
- (5) **Program Owner:** The program owner is Collection, an organization within the Small Business Self-Employed (SBSE) division.
- (6) **Primary Stakeholders:** The primary stakeholders are Chief Counsel and Department of Justice attorneys.
- (7) **Program Goals:** The Legal Reference Guide for Revenue Officers is intended to make available to revenue officers and other personnel engaged in collection efforts the fundamentals of legal knowledge needed in their daily activities.

5.17.4.1.1  
(05-23-2019)  
**Background**

- (1) The Legal Reference Guide for Revenue Officers has been established as a Handbook within the Internal Revenue Manual. It is not the source of procedural instructions. Revenue officers and other Internal Revenue Service personnel must still look to the basic Internal Revenue Manual (IRM) provisions outside the Handbook for such instructions. While revenue officers are not expected to have the comprehensive knowledge of the law required of attorneys, it is hoped that they will gain sufficient understanding from the material in the following sections to recognize the legal problems that might call for reference to Counsel for consideration.

5.17.4.1.2  
(09-08-2023)  
**Authority**

- (1) The U.S. Constitution, Article 1, Section 8, provides that ... *Congress shall have power to lay and collect taxes....* The 16th Amendment allows Congress to impose an income tax without apportionment, which provides the authority for Title 26. Congress in enacting the Internal Revenue Code as Title 26 gave the Service broad administrative processes for the collection of taxes. Although such processes are responsible for a majority of the delinquent tax accounts collected, considerable credit for such success lies in the ability of the Internal Revenue Service to utilize, when necessary, the aid of the courts to ensure collection of the tax. This use of the courts in assisting and effecting collection is commonly referred to as *judicial process*.

- (2) A request, for institution of a legal proceeding to effect or assist in the collection of a tax, generally originates with an individual Revenue Officer within a Field Collection Area Director's organization. However, suit recommendations can be initiated by any Collection employee.
- Specific policies related to collection work are in IRM 1.2.1.6, Policy Statements for the Collecting Process.
  - Specific delegations of authority related to collection work are in IRM 1.2.2.6, Delegations of Authority for the Collecting Process, IRM 1.2.2.14, Delegations of Authority for Special Topics Activities, and in IRM 1.2.65.3, SB/SE Functional Delegation Orders – Collection.
- (3) The authority to approve most suit recommendations is delegated to Collection Territory Managers and Advisory Territory Managers. However, Area Director approval is required if the recommendation is to either:
- Secure judicial approval to seize a principal residence; or
  - Foreclose the federal tax lien against the principal residence of any person.
  - See IRM 1.2.65.3.2, SBSE 1-23-9, Approval of Form 4477, Civil Suit Recommendation.
- (4) The general authority for the United States to commence a court action for the collection or recovery of taxes is provided for by IRC 7401I, as follows:
- “No civil action for the collection or recovery of taxes, or of any fine, penalty, or forfeiture shall be commenced unless the Secretary authorizes or sanctions the proceedings, and the Attorney General or their delegate directs that the action be commenced.”
- (5) Where the commencement of an action has not been authorized or sanctioned, it is subject to dismissal. Civil actions commenced under this provision must be brought in the name of the United States and not a government official. Initiation and representation during suits by the government is as follows:
- a. **Initiation:** The Secretary of the Treasury through regulations has delegated to both the Commissioner and the Chief Counsel the authority to request instituting an action. This is why recommendations for suits by Collection are sent to Counsel.
  - b. **Representation:** The Attorney General has not delegated the authority to direct the institution of such a proceeding to the United States Attorney, which is why the Department of Justice Tax Division commences suits by the government.
- (6) The authorities for the actions discussed in this IRM are found in the following Internal Revenue Code and regulation sections

U.S. Code Section	Regulation	Title
IRC 6332(d)	26 CFR 301.6332-1(b)	Surrender of property subject to levy
IRC 6673	26 CFR 301.6673-1	Sanctions and costs awarded by courts
IRC 7401	26 CFR 7401-1	Authorization

U.S. Code Section	Regulation	Title
IRC 7402(a)	no regulation	Jurisdiction of district courts To issue orders, processes, and judgments
IRC 7402(e)	no regulation	Jurisdiction of district courts To quiet title
IRC 7403	26 CFR 7403-1	Action to enforce lien or to subject property to payment of tax
IRC 7404	26 CFR 301.7404-1	Authority to bring civil action for estate taxes
IRC 7405	no regulation	Action for recovery of erroneous refunds
IRC 7406	26 CFR 7406-1	Disposition of judgments and moneys recovered
IRC 7408	no regulation	Actions to enjoin specified conduct related to tax shelters and reportable transactions
IRC 7424	26 CFR 301.7424-1	Intervention
IRC 7425(d)	26 CFR 7425-4	Discharge of liensRedemption by United States

**Note:** Title 26 of the United States Code is called the Internal Revenue Code (IRC). The legal cite might be referenced in various ways and with or without the section symbol.

**Note:** The IRC and the Regulations may be researched online using *United States Code* or *Electronic Code of Federal Regulations* respectively.

#### 5.17.4.1.3 (05-23-2019)

##### **Roles and Responsibilities**

- (1) IRM 5.17.1, General Information, provides a list of the parties with an explanation of their role with suits.

#### 5.17.4.1.4 (09-08-2023)

##### **Program Management and Review**

- (1) **Program Reports:** Suits are individual to the case and are of a wide variety and scope. When it is appropriate the Collection employee will provide a case Narrative Report for Area Counsel and the Department of Justice identifying all pertinent facts so that appropriate legal action may be taken. Narrative Reports are discussed in IRM 5.17.12, Investigations and Reports. Submission of suit recommendations is through the *eApproval* SharePoint platform, which provides data analytics for the program.
- (2) **Program Effectiveness:** Whenever litigation involving collection matters is pending or the institution of affirmative legal action to effect collection is being considered, revenue officers will, in the main, be investigators of facts. They will be required to prepare reports concerning any facts ascertained. The lawyers charged with the responsibility of handling the cases must rely on those facts and reports when making case decisions.

#### 5.17.4.1.5 (09-08-2023)

##### **Program Controls**

- (1) Collection Advisory maintains a copy of any suit documentation until the suit is closed. After case closure see Document 12990, Records and Information Management Records Control Schedules, under section Internal Revenue Service Records Control Schedule (RCS) 28, Tax Administration Collection, in:

- PART III - Administrative Records - All Collection Functions, item number 38, Litigation Files, and in
- PART IV - Delinquent Accounts, Delinquent Returns, And Office Services Records, item 45, Suits to Foreclose Federal Tax Liens, item 53, Civil Suit Recommendation, Form 4477, and in item 54 (a), Special Procedures Function Case Files.

(2) Preserving electronically stored information is covered in:

- IRM 25.3.1.7, Preserving Electronically Stored Information In Litigation Cases.
- IRM 25.3.1.7.21, References, and
- *Chief Counsel Notice 2016-005*.

5.17.4.1.6  
(03-25-2022)

(1) The table lists the common acronyms and their definitions.

#### Terms and Acronyms

Acronym	Definition
CDP	Collection Due Process
CSED	Collection Statute Expiration Date
DOJ	Department of Justice
FCC	Federal Communications Commission
FDCPA	Federal Debt Collection Procedures Act of 1990
FLU	DOJ Tax Division Financial Litigation Unit (FLU)
IRC	Internal Revenue Code
IRM	Internal Revenue Manual
NFTL	Notice of Federal Tax Lien
RBA	Restitution-Based Assessment
RCS	Records Control Schedules (Internal Revenue Service)
RRA 98	Restructuring and Reorganization Act of 1998
SB/SE or SBSE	Small Business / Self-Employed Division
TAS	Taxpayer Advocate Service
USC or U.S.C.	United States Code

5.17.4.1.7  
(09-08-2023)

#### Related Resources

- (1) For procedural guidelines on recommending suits after administrative actions have been exhausted or determined to be unfeasible and/or inappropriate, see IRM 25.3.2, Suits by the United States.
- (2) For information regarding pre-suit investigations and elements needed for the suit recommendation's narrative report, see IRM 5.17.12, Investigations and Reports.



- (3) For information regarding lawsuits that are brought against the United States, see IRM 5.17.5, Suits Against the United States.
- (4) The Taxpayer Bill of Rights (TBOR) lists rights that already existed in the tax code, putting them in simple language and grouping them into 10 fundamental rights. Employees are responsible for being familiar with and acting in accord with taxpayer rights. See IRC 7803(a)(3), Execution of Duties in Accord with Taxpayer Rights. For additional information about the TBOR, see <https://www.irs.gov/taxpayer-bill-of-rights>, Taxpayer Bill of Rights (TBOR).
- (5) Other resources available for suit recommendations include:
  - The Knowledge Management *Suit Resources and Examples* page, which contains User Guides for completing the suit recommendation package and form package examples of the most common recommendations.
  - The *eApproval* suit recommendation electronic submission platform.
  - On the Counsel presentation, *Suit Referrals: Top 10 Tips from DOJ*.

5.17.4.2  
(03-25-2022)  
**Initiating and Processing  
Collection Suits**

- (1) A request for institution of a legal proceeding to effect or assist in the collection of a tax is generally initiated in the office of the Area Director by the Field Collection function or Advisory. However, suit recommendations can be initiated by any Collection employee.
- (2) The authority to approve most suit recommendations is delegated to Collection Territory Managers and Advisory Territory Managers. However, Area Director approval is required if the recommendation is to either
  - a. secure judicial approval to seize a principal residence; or
  - b. foreclose the federal tax lien against the principal residence of any person.

See IRM 1.2.65.3.2, SBSE 1-23-9, Approval of Form 4477, Civil Suit Recommendation.

5.17.4.2.1  
(09-08-2023)  
**General Procedures**

- (1) Prior to recommending the commencement of any legal proceeding for the collection of taxes, the responsible initiating officer should become thoroughly familiar with appropriate provisions of the Internal Revenue Manual and Section 12 of this Legal Reference Guide (IRM 5.17.12), entitled Investigations and Reports, IRM 25.3.2, Litigation and Judgments, Suits by the United States, the Knowledge Management *Suit Resources and Examples* page, and the *eApproval* suit recommendation electronic submission platform.
- (2) Area Counsel is always available for the purpose of rendering legal advice in ascertaining the most desirable course of action available and the probability of processing a case through to a successful conclusion. Should the revenue officer uncover information early in the investigation that casts doubt on the success of a contemplated legal proceeding, much time and effort can be saved by requesting timely legal assistance.
- (3) An examination of the steps taken after a suit recommendation is received by Area Counsel will show the advantage of making a timely recommendation for the institution of a collection suit. After receipt of the suit recommendation together with supporting documents through *eApproval*, Area Counsel examines the case carefully from a legal viewpoint to determine whether or not suit

is warranted on the facts presented. If suit is warranted, Area Counsel then prepares a letter to the Assistant Attorney General, Tax Division, Department of Justice, authorizing and requesting the institution of suit. That letter must contain a discussion of the necessary facts and supporting documents, tax information, and applicable statutes and judicial decisions that may be relevant to the case.

- (4) When the Department of Justice receives the authorization, the case becomes the responsibility of the Department of Justice which makes the final decision whether to institute the suit. The Department of Justice, generally following coordination with Area Counsel, may also determine that a settlement agreement with the taxpayer should be considered. Thus, a significant amount of time may elapse before a suit is filed and a judgment is obtained.
- (5) When the Department of Justice is given authorization to initiate litigation to collect unpaid federal taxes, it assumes jurisdiction over collection actions. No further administrative collection actions not specifically authorized by the Department of Justice may be taken until jurisdiction for collection is returned to the Internal Revenue Service.

#### 5.17.4.2.2 (03-03-2023)

##### **Statutory Authority**

- (1) The general authority for the United States to commence a court action for the collection or recovery of taxes is provided for by IRC 7401, as follows:

“No civil action for the collection or recovery of taxes, or of any fine, penalty, or forfeiture shall be commenced unless the Secretary authorizes or sanctions the proceedings, and the Attorney General or their delegate directs that the action be commenced.”

- (2) The Attorney General has not delegated the authority to direct the institution of such a proceeding to the United States Attorney. The Secretary of the Treasury has delegated their power of authorization to the Chief Counsel of Internal Revenue. Where the commencement of such an action has not been authorized or sanctioned, it is subject to dismissal. Civil actions commenced under this provision must be brought in the name of the United States and not a government official.

#### 5.17.4.2.3 (08-01-2010)

##### **Parties to Suit**

- (1) Generally, the parties or persons who are actively concerned in the prosecution and defense of a lawsuit can be designated as either plaintiffs or defendants.

- The plaintiff is the usual term applied to the person or persons who initiate the suit.
- The defendant is the usual term applied to the person or persons against whom relief or recovery is sought in an action or suit.

- (2) The United States may only be named as a defendant where Congress has enacted a statute specifically authorizing such suit. See IRM 5.17.5, Suits Against the United States.

#### 5.17.4.2.4 (03-25-2022)

##### **Jurisdiction of Courts**

- (1) Generally, jurisdiction can be defined as the power conferred upon a court to hear and determine the subject matter in controversy between parties and to grant the relief asked. Federal courts derive their authority to act either from the United States Constitution or an Act of Congress. State courts derive their authority to act either from the State Constitution or Acts of the Legislature of

the particular state. The United States may be a defendant in a state court proceeding, such as a mortgage foreclosure proceeding. The United States, however, has the right to seek removal from the state court to federal district court. However, the United States only has 30 days from receipt of the initial pleading setting forth the claim for relief or 30 days from service of the summons and complaint to file a notice of removal. See *28 USC 1441* and *28 USC 1446*. Where it is the plaintiff, the United States utilizes federal courts to enforce collection of its taxes.

- (2) The jurisdiction of United States district courts to hear collection suits is established by IRC 7402(a) which provides as follows:

“The district courts of the United States at the instance of the United States shall have such jurisdiction to make and issue in civil actions, writs and orders of injunction, and of **ne exeat republica**, orders appointing receivers, and such other orders and processes, and to render such judgments and decrees as may be necessary or appropriate for the enforcement of the internal revenue laws. The remedies hereby provided are in addition to and not exclusive of any and all other remedies of the United States in such courts or otherwise to enforce such laws.”

- (3) The United States Code additionally provides in *28 USC 1345*:

“United States as plaintiff. Except as otherwise provided by Act of Congress, the district courts shall have original jurisdiction of all civil actions, suits or proceedings commenced by the United States, or by any agency or officer thereof expressly authorized to sue by Act of Congress.”

5.17.4.2.5  
(03-25-2022)  
**Venue of Actions**

- (1) Venue means the place where a suit is tried. A civil action for the collection of internal revenue taxes may be brought in the district where the liability for such tax accrues, in the district of the taxpayer’s residence, or in the district where the return was filed. *28 USC 1396*.
- (2) The United States, therefore, has a choice of forum in the institution of civil suits for the collection of taxes. However, in an *in rem* action (an action against property, rather than against a person, such as a lien foreclosure suit), venue would ordinarily lie in the district where the property in question was located.

5.17.4.3  
(01-08-2016)  
**General Characteristics of a Suit**

- (1) A lawsuit by the United States to collect taxes is generally commenced by the filing of the complaint drafted, in most cases, by someone assigned to the case in the Tax Division of the Department of Justice. When the suit is brought by the United States, the action is commenced in a federal district court.
- (2) After the filing of the complaint with the court, a copy of the complaint accompanied by a summons is generally served upon all persons named as a party to the action. After service of a summons and complaint, the defendant or defendants are required to file an answer to the complaint within 21 days. See Rule 12, F.R.Civ.P.
- (3) The purpose of the complaint and answer thereto, which together with all other documents filed in the case are described as pleadings, is to define the issues and apprise the parties of what they must be prepared to argue at the trial.

5.17.4.3.1  
(08-01-2010)  
**Appeal**

- (1) Decisions of a state or district court are generally subject to review by another court. That is, the losing party can usually appeal the lower court's decision as a matter of right to a higher authority, generally referred to as an appellate court. The method and procedure for effecting an appeal are provided by statute.
- (2) Issues appealable from a federal district court are usually appealed to the Court of Appeals for the Circuit in which the district court is located. Appeals to the United States Supreme Court may be taken from a decision of a Court of Appeals or the highest state court. The usual time limitation in which an appeal may be taken from a decision of the federal district court in a case in which the United States is a party is 60 days.

5.17.4.4  
(03-25-2022)  
**Periods of Limitation upon Assessment and Collection of Tax under the Internal Revenue Code**

- (1) The statute of limitations for collection is found in IRC 6502. However, since the statute of limitations for collection generally starts to run on the date of assessment, it is also important to be familiar with the statutory period within which such assessment must be made to be valid. See Exhibit 5.17.4–1 for a summary of some of the more common periods of limitation upon assessment, or commencement of a proceeding in court without assessment, and collection of tax as provided for by the Internal Revenue Code. The failure to timely assess or to commence a suit for the collection of taxes assessed within the period of limitations can defeat a judicial action.
- (2) The burden of proving that the assessment or collection suit is untimely because the period of limitations has expired generally rests on the taxpayer, unless the United States is acting in reliance on an exception to the normal statute of limitations. See IRC 6502 and IRC 6503 for lists of events which suspend the normal limitation periods.

**Note:** There are other IRC sections whose provisions may result in extensions of the CSED, including, but not limited to, IRC 6015(e)(2), IRC 6330(e)(1), IRC 6331(i)(5), IRC 6331(k)(3)(B), IRC 6672(c)(4), IRC 7508, and IRC 7508A.

**Note:** Under *United States v. Westbrooks*, 858 F. 3d 317, 328 (5th Cir. 2017) certain Restitution-Based Assessments (RBA) have an exception limiting the Collection Statute Expiration Date (CSED). When a limited period of enforceability applies under this exception, the IRS cannot file suit to reduce the RBA to judgment in order to extend the CSED. See IRM 5.1.5.18(4), Collection Actions on Cases with Restitution-Based Assessments (RBA).

- (3) If an exception is relied upon for assessing the tax or commencement of the collection suit after the normal period for such action has expired, the burden is upon the Internal Revenue Service to show that the exception applies. Failure to carry this burden will generally result in a dismissal of the proceedings.

5.17.4.5  
(03-03-2023)  
**Administrative Procedures for Extending Period of Limitations for Collection by Waiver**

- (1) Prior to the enactment of the Internal Revenue Service Restructuring and Reform Act of 1998 ("RRA 98"), the collection period could commonly be extended by the execution of a written waiver between the taxpayer and the Secretary of the Treasury or their delegate. This authority was severely curtailed by RRA 98.
- (2) For waiver agreements entered into on or before December 31, 1999, the expiration of the collection period is the later of:

- a. the 10-year period;
  - b. December 31, 2002; or
  - c. in the case of an extension in connection with an installment agreement, the 90th day after the end of the period of such extension.
- (3) For agreements to extend the period of limitations made in conjunction with offers in compromise, the above rules also apply. Thus, in the case of a waiver made in conjunction with an offer entered into on or before December 31, 1999, the expiration of the collection period is the later of the 10-year period or December 31, 2002. No waiver may be made in conjunction with offers entered into after December 31, 1999. In situations involving cumulative offers, or other statute problems involving offers, advice of Area Counsel may be sought.
- (4) After December 31, 1999, waiver of the statute of limitations for collection may be secured only in the following two situations:
- a. For requests to extend the period of limitations made **after** December 31, 1999, if there is an installment agreement between the taxpayer and the Secretary, a court proceeding must be brought or a levy made prior to the date which is 90 days after the expiration of any period for collection agreed upon in writing by the Secretary and the taxpayer at the time the installment agreement was entered into.
  - b. Where release of levy has been made under IRC 6343 after the 10-year period, a levy must be made or court proceeding begun prior to the expiration of any period for collection agreed upon in writing by the Secretary and the taxpayer before such release.
- (5) For any waiver, the extension period commences to run on the date the acceptance of the waiver is signed by the Area Director or authorized delegate, not the date of receipt of the waiver.

5.17.4.6  
(03-25-2022)  
**Collection of Judgments**

- (1) The primary responsibility for the collection of judgments rendered in favor of the United States rests with the Department of Justice (DOJ). As a general rule, the DOJ Tax Division Financial Litigation Unit (FLU) will collect judgments for money due, other than payments to be made as part of a bankruptcy case or plan. United States Attorney Offices also have FLUs. The FLU may request advice and assistance from the IRS.
- (2) After the judgment has been entered, or a settlement is reached, the case is transferred to the Tax Division FLU, which is responsible for attempting to collect the judgment. When collection efforts are exhausted, the FLU transfers the case back to the DOJ trial section for closing and notification to the IRS. At this point, collection jurisdiction is generally returned to the IRS. However, jurisdiction to compromise taxes that are reduced to judgment is retained by DOJ.
- (3) If property is located which can be seized in satisfaction of the judgment, this information should be made immediately available to the appropriate DOJ employee. Levy provisions of the Internal Revenue Code are also available to enforce collection of accounts reduced to judgment in litigation begun within the 10-year collection period. See IRM 25.3.5, Judgment Follow-up, for procedures relating to the collection of judgments. While a judgment remains open in DOJ, simultaneous collection by IRS is not prohibited if DOJ has been informed and agrees with the collection(s).

- (4) Under the provisions of IRC 7406, "All judgments and moneys recovered or received for taxes, costs, forfeitures, and penalties shall be paid to the Secretary as collections of internal revenue taxes."

5.17.4.6.1  
(03-25-2022)  
**Settlement of  
Judgments**

- (1) In all cases where the United States has obtained a judgment for tax liabilities, compromise authority thereafter rests with the Department of Justice (DOJ). The IRS cannot compromise under IRC 7122 taxes that have been reduced to judgment (except Tax Court judgments). See *Chief Counsel Directives Manual, Settlement Procedures* (IRM 34.6.1.2.10).
- (2) Although DOJ may have referred a judgment back to the IRS for collection, it continues to retain sole jurisdiction to compromise the judgment.

5.17.4.6.2  
(03-25-2022)  
**Effect of Judgment on  
Collection Statute of  
Limitations**

- (1) Under IRC 6502(a), if a court action is brought against the taxpayer prior to the Collection Statute Expiration Date (CSED), the collection period is extended until the liability for the tax (or the judgment against the taxpayer) is satisfied or becomes unenforceable. Therefore, when a tax assessment is reduced to judgment, thereby extending the collection period, the IRS has two different avenues for collection:
  - a. the tax may be collected by levy by the IRS under the Internal Revenue Code, or
  - b. the judgment may be enforced by the DOJ Tax Division or U.S. Attorney Office under the Federal Debt Collection Procedures Act (FDCPA). See *28 USC 3001* through *28 USC 3308*.
- (2) The FDCPA provides alternative ways in which civil judgments entered in favor of the United States may be collected. While the FDCPA applies to judgments entered in civil tax cases, the collection remedies contained in the Internal Revenue Code are still available for assessments that are reduced to judgment.
- (3) Under the FDCPA, when a judgment is obtained in a suit to reduce assessments to judgment, the Government may file a certified copy of the abstract of judgment in order to create a *judgment lien* against the taxpayer's real property. The certified copy of the abstract of judgment must be filed in the same manner as a Notice of Federal Tax Lien under IRC 6323(f).
- (4) The judgment lien created by the filing of the abstract of judgment attaches only to real property. A judgment lien against personal property can be obtained only by seizing the property under judgment enforcement procedures.
- (5) The judgment lien is effective, unless satisfied, for 20 years. Upon court approval, the judgment lien may be renewed for one additional period of 20 years by filing a notice of renewal. See *28 USC 3201*.

**Note:** While a suit to reduce assessments to judgment has the effect of extending the collection statute of limitations under IRC 6502(a), the collection statute expiration date (CSED) is not tied to the duration of the judgment lien. The federal tax lien created under IRC 6321 does NOT merge into the judgment lien, but continues to exist independently.

- (6) If the Government does not file the abstract of judgment with a recording office, it may nonetheless enforce the judgment against the taxpayer's



property, including real property, by writ of execution. The FDCPA does not provide a time limit within which the Government must enforce the judgment in this manner.

- (7) Because the federal tax lien does not merge with the judgment lien, the time periods applicable to judgment liens do not apply to the federal tax lien. If a suit is timely filed to reduce tax assessments to judgment, the IRS may pursue administrative collection indefinitely against the taxpayer's real or personal property under IRC 6502(a).

**Note:** While a timely suit to reduce assessments to judgment will extend the CSED indefinitely, Notices of Federal Tax Lien must still be timely refiled during the refiling period in order for the IRS to maintain its priority. See IRM 5.12.8, Notice of Lien Refiling.

- (8) Although the collection statute of limitations is extended indefinitely when a tax assessment is reduced to judgment, the IRS has determined that assessments reduced to judgment for which there is no collection potential after 20 years from the date of the judgment will not be maintained on IDRS. However, if collection sources are identified after this 20-year period, the account may be reinstated and collection actions may be resumed. See IRM 25.3.5.6 for procedures for establishing controls for cases in which tax assessments have been reduced to judgment.

5.17.4.6.3  
(03-25-2022)  
**Assessment of Court  
Sanctions, Penalties and  
Costs**

- (1) Under IRC 6673(b)(1), a court may require the taxpayer to pay a penalty not in excess of \$10,000 when the taxpayer's position in an IRC 7433 damages case is frivolous or groundless.
- (2) Under IRC 6673(b)(2) and IRC 6673(b)(3), any monetary sanctions, penalties or costs awarded to the Internal Revenue Service in a civil tax proceeding brought by or against the government in any court (other than the Tax Court), or awarded in connection with an appeal from the Tax Court or other court, may be assessed and, upon notice and demand, collected in the same manner as a tax.
- (3) See IRM 25.3.5.8 for procedures for requesting assessments under IRC 6673(b).

5.17.4.7  
(09-08-2023)  
**Suit to Reduce  
Assessments to  
Judgment**

- (1) As a general rule the purpose of instituting a suit to reduce assessments to judgment is to prevent the statute of limitations for collection from running where collection cannot be accomplished by administrative methods within the normal statutory period.

**Note:** Under *United States v. Westbrooks*, 858 F. 3d 317, 328 (5th Cir. 2017) certain Restitution-Based Assessments (RBA) have an exception limiting the Collection Statute Expiration Date (CSED). When a limited period of enforceability applies under this exception, the IRS cannot file suit to reduce the RBA to judgment in order to extend the CSED. See IRM 5.1.5.18(4), Collection Actions on Cases with Restitution-Based Assessments (RBA).

- (2) A suit in aid of collection of taxes will not usually be authorized unless all administrative remedies available have been exhausted or their use would prove

ineffective. An example of a recommendation package to reduce assessments (aka claims) to judgment can be found on the Knowledge Management *Suit Resources and Examples* page.

5.17.4.7.1  
(03-25-2022)

**Statutory Authority**

- (1) The statutory authority for bringing a suit to reduce assessments to judgment is found in IRC 7401 and IRC 7402(a). These sections are set forth in IRM 5.17.4.2.2 and IRM 5.17.4.2.4.

5.17.4.7.2  
(08-01-2010)

**Amount and Collectibility of Tax Claim**

- (1) Guidelines for determining whether it is feasible to recommend a suit to reduce assessments to judgment are found in IRM 25.3.2.

5.17.4.7.3  
(03-25-2022)

**Effect of Judgment on Tax Lien and Levy**

- (1) IRC 6322 (relating to period of lien) provides that where a tax assessment is reduced to judgment, the lien continues until the underlying tax liability or the related judgment is satisfied, or the tax lien becomes unenforceable by reason of lapse of time.
- (2) With respect to levy proceedings, IRC 6502(a) (relating to length of period of collection) makes it clear that the Internal Revenue Service may continue to levy beyond the normal collection period when a judgment is timely sought until the tax liability or judgment is satisfied or becomes unenforceable.
- (3) Moreover, the Internal Revenue Service's right to initiate foreclosure under the tax lien (as contrasted with the more cumbersome method of foreclosing under the judgment) is still available after the assessment is reduced to judgment.

5.17.4.7.4  
(03-25-2022)

**Affordable Care Act's (ACA) Shared Responsibility Assessments**

- (1) **Shared Responsibility Payment (SRP):** The IRC 6321 statutory lien arises normally on the IMF SRP (MFT 35 and the mirrored MFT 65) assessments. However, an IRC 6323, **Notice of Federal Tax Lien cannot be filed** on these assessments. (See IRC 5000A, and IRC 5000A(g)(2)(B)). Also, IRS policy is that IRS will not take judicial action to reduce the liability to judgment.

**Note:** MFT 35, tax class 6 is still used on NMF for partnership returns Forms 1065.

- (2) **Shared Responsibility for Employer:** The IRC 6321 statutory lien arises normally on these BMF MFT 43 assessments and an IRC 6323, **Notice of Federal Tax Lien may be filed** and included in a recommendation to reduce assessments to judgment. ( See IRC 4980H and IRC 4980H(d)(1)).

5.17.4.8  
(09-08-2023)

**Foreclosure of Federal Tax Lien**

- (1) The Internal Revenue Service initiates a suit to foreclose a tax lien where there is a specific, presently available source of collection. It uses a suit to reduce assessments to judgment to extend the collection period where there is no source of collection currently available. In most other respects the commencement and prosecution of the suits are very similar.
- (2) In a foreclosure action, the Department of Justice often requests a judgment against the taxpayer. Doing so is appropriate where the property subject to the federal tax lien is not sufficient to satisfy the entire tax liability. In addition, combining a lien foreclosure action with a suit to reduce assessments to judgment avoids potentially duplicative suits.



- (3) An example of a foreclosure recommendation can be found on the Knowledge Management *Suit Resources and Examples* page.

5.17.4.8.1  
(03-03-2023)  
**Statutory Authority**

- (1) Under IRC 7403, where there has been a refusal or neglect to pay any tax, the Attorney General, at the request of the Secretary of the Treasury, is authorized to institute a civil action in federal district court to enforce the lien or to subject any property in which the taxpayer has an interest to the payment of the tax liability. IRC 7403(a). The Secretary of the Treasury through regulations has delegated to both the Commissioner and the Chief Counsel the authority to request instituting an action under IRC 7403.
- (2) All persons having liens on or claiming any interest in the property involved in the action must be made parties to the action. IRC 7403(b).
- (3) In a lien foreclosure action, the court determines the merits of all claims to and liens on the property, and, where the interest of the United States is established, may order the sale of the property. The property is sold free and clear of all liens and encumbrances. The proceeds of the sale are then distributed in accordance with the court's determination of the parties' interests in the property. IRC 7403(c).

**Note:** In *United States v. Rodgers*, 461 U.S. 677 (1983), the Supreme Court held that IRC 7403 contemplates the sale of the entire property, not just the taxpayer's interest in the property. Nevertheless, the Court found where a nondelinquent third party has an interest in the property (such as homestead property), courts have limited equitable discretion to refuse to order the sale of the entire property. Where the entire property is sold, the nondelinquent third party is entitled to be fully compensated for the value of their interest in the property from the proceeds of the sale.

- (4) If the United States holds the first lien on the property, it may bid at the sale. The amount of the United States' bid cannot exceed the amount of the federal tax lien plus the expenses of sale. IRC 7403(c).

**Note:** Whether the Government exercises its right to bid is a matter within the discretion of the appropriate Area Director. It may be appropriate for the Government to bid on the property to prevent its sale at distress prices. This protects the interests of the Government as well as those of the taxpayer.

- (5) IRC 7403 also provides that the court may at the request of the Government appoint a receiver to enforce the lien. The court may also appoint a receiver with all of the powers of receivers in equity where the Government has certified that such appointment is in the public interest. IRC 7403(d). For detailed discussion of receivership, see IRM 5.17.4.10.

**Note:** The IRS will not authorize the Department of Justice to foreclose the tax lien on Federal Communications Commission (FCC) licenses, in deference to the FCC's regulatory authority over such licenses. For the same reason, the IRS will not administratively seize and sell FCC licenses. See IRM 5.10.1.13.2. The IRS may, however, authorize a suit to reduce tax assessments to judgment and to appoint a receiver to sell the FCC license under FCC supervision, without asserting that the tax lien attaches to the license. See also IRM 5.17.2.5.3.4(1), Intangible Property, and IRM 5.10.1.13.2(1), FCC Broadcasting Licenses.

5.17.4.8.2  
(11-06-2007)  
**Issues to Consider  
When Recommending  
an Action to Foreclose a  
Tax Lien**

- (1) There are several important factors to consider when determining whether to recommend to Area Counsel that a case be referred to the Department of Justice to institute an action to foreclose a federal tax lien.

5.17.4.8.2.1  
(03-25-2022)  
**Administrative  
Collection Devices Are  
Not Feasible or  
Adequate**

- (1) As a general rule the administrative collection remedies available to the Internal Revenue Service are adequate. However, there are situations in which such remedies have been exhausted or where administrative collection would not be feasible because, for example, the property has a clouded title. In such cases, consider recommending to Area Counsel that the matter be referred to the Department of Justice for court action. Below are several examples of situations in which lien foreclosure may be appropriate:

- There are encumbrances on the property in addition to the federal tax lien which make it difficult to determine the relative interests in the property, thereby, in all likelihood, driving down the price purchasers would be willing to pay at a distraint sale.
- There is a cloud on title, or title is contested by a third party or parties.
- There are unpaid federal tax liens against only one of several co-owners of real property in an area where the sale of undivided partial interests is unfeasible.
- A business is to be sold as a going concern (e.g., suit may be appropriate when also seeking the appointment of a receiver to operate the business pending the sale to prevent waste or fraud by the taxpayer, see IRM 5.17.4.10, below).
- The Internal Revenue Service wishes to reach the cash surrender value of a taxpayer's insurance policy.

5.17.4.8.2.2  
(08-01-2010)  
**Redemption Rights**

- (1) Unlike the sale of real property at a distraint sale, the taxpayer has no right to redeem the property after court ordered foreclosure of the federal tax lien. This makes the property generally more desirable to purchasers and would normally result in a higher selling price than at a distraint sale.

5.17.4.8.2.3  
(03-25-2022)  
**Statute of Limitations**

- (1) See IRM 5.17.4.4 and Exhibit 5.17.4–1 for a general discussion of the statute of limitations on collection actions.
- (2) Where the Internal Revenue Service has reduced assessments to judgment, it may bring a lien foreclosure action after the statutory period provided in IRC 6502(a) expires.

**Reminder:** The lien referenced here is the federal tax lien arising under IRC 6321, not the judgment lien that arises under *28 USC 3201*.

**Note:** While obtaining a judgment extends the life of the lien for the purposes of bringing a lien foreclosure action, in order to maintain the priority of the lien in relation to other creditors, the Internal Revenue Service must refile the Notice of Federal Tax Lien as provided in IRC 6323(g).

- (3) A lien foreclosure action initiated before expiration of the statute of limitations on collection is sufficient to enforce the interest of the United States against the named property even if reduction of the assessments to judgment is not

sought concurrently. The refiling of the Notice of Federal Tax Lien under IRC 6323(g) is needed in this situation as well.

5.17.4.8.2.4  
(08-01-2010)

**Economic Feasibility of  
Lien Foreclosure**

- (1) The tax liability and the amount expected to be recovered should be substantial enough to warrant bringing a foreclosure action. Guidelines for determining whether it is feasible to recommend a suit are found in IRM 25.3.2.3.

5.17.4.8.2.5  
(09-08-2023)

**Lien Foreclosure on a  
Principal Residence**

- (1) This section discusses the additional elements needed when the residence is defined in 26 CFR 301.6334-1(d) as the **taxpayer's principal residence**. However, lien foreclosure, on the **personal residence** of any person (defined in IRM 5.10.2-1 Real Property, Row 2), or on the taxpayer's **principal residence** (defined in IRM 5.10.2-1 Real Property, Row 1), requires the written approval of the Area Director.
- (2) **Taxpayer's Principal Residence** suit recommendations to foreclose the tax lien, while not explicitly stated, carry the same considerations as IRM 5.10.2.3, Judicial Approval for Principal Residence Seizures. The suit to foreclose is the secondary alternative used only when the seizure remedy is not the optimal solution. Additionally, a suit to foreclose should only be pursued when there are no reasonable administrative remedies and hardship issues, as described in (3 c) below, to consider.
- (3) **Taxpayer's Principal Residence** suit to foreclose case action requirements are completed prior to submitting the suit recommendation to Advisory and with the results of the actions included in the suit recommendation narrative. They include:
  - a. Attempt to personally contact the taxpayer and inform them that a suit to foreclose the tax lien on the principal residence is the next planned action (follow IRM 5.10.1.6.1, Personal Contact to Advise the Taxpayer of Proposed Seizure Action, and IRM 5.1.10.7.2, Right to Retain Representation);
  - b. Attempt to identify the occupants of the principal residence (see IRM 5.10.2.3(7));
  - c. Attempt to discuss administrative remedies with the taxpayer (see discussion in IRM 5.10.1.5.2 regarding alternative methods of collection and risk analysis). This discussion should include the taxpayer's potential to submit an Offer in Compromise (including an Effective Tax Administrative offer or, an offer with consideration of special circumstances) as an administrative remedy, when appropriate (follow IRM 5.8.11);
  - d. Include a summary statement in the case history and narrative report. The history statement will contain a discussion of whether the action proposed would result in an inability to secure future housing or otherwise lead to an economic hardship (see IRC 301.6343-1(b)(4)(i)). Base this on all available information obtained while working with the taxpayer. This would include any health issues experienced by the taxpayer or others impacting acquisition, by the taxpayer, of future housing. Otherwise, include the reason sufficient data does not exist to provide this analysis.
  - e. Advise the taxpayer about the Taxpayer Advocate Service (TAS), provide Form 911, Request for Taxpayer Advocate Assistance (And Application for Taxpayer Assistance Order); and explain its provisions; if the taxpayer indicates that the planned foreclosure of the principal residence would create a hardship, the RO will assist the taxpayer with the preparation of

Form 911 and should forward the form to the local Taxpayer Advocate Service office if the revenue officer cannot or will not provide the requested relief (see IRM 13.1.7, Taxpayer Advocate Service (TAS) Case Criteria, for other situations that qualify for Taxpayer Advocate referral and the appropriate procedures to follow);

**Exception:** If DOJ has jurisdiction over a case and requests a deviation from the requirements in (a), (c), and (e) above due to ongoing actions in court (for example, an adversarial action and bankruptcy discharge exception), confirm the need for a deviation with Area Counsel. Where Area Counsel confirms the deviation as appropriate, include the circumstances of the deviation in the narrative report and ICS history. Provide documentation for reviewers and approvers (for example, court documents and bankruptcy file) as exhibits with the foreclosure recommendation. Any other information such as a hardship determination should then be ascertained without personal contact.

- (4) **Taxpayer's Principal Residence:** suit narrative body should contain, along with the information on the taxpayer, information on the occupants of the principal residence including children. Provide the name(s), relationship(s) to the taxpayer, brief history (age, health, etc.), and current mailing address of the occupant(s) if it differs from the address of the property being foreclosed and a summary of the administrative remedies considered. If the information is unavailable explain the circumstances why the information was not able to be obtained. (See the section IRM 5.17.12.20.2, Format of the Form 4477-B Narrative Report and in particular IRM 5.17.12.20.2.4, Additional Items for Lien Foreclosure of Taxpayer's Principal Residence. An example of a principal residence foreclosure recommendation including a hardship discussion can be found on the Knowledge Management *Suit Resources and Examples* page.
- (5) **ENTITY REPORT:** A manager, management assistant, or IQA may input "Principal Residence" as a program name in ICS as an identifier in creating a sort query of cases. Instructions can be found in the ICS User Guide - Chapter 9 Program Names.

5.17.4.8.3  
(08-01-2010)  
**Preparing  
Recommendation to  
Institute an Action to  
Foreclose Tax Liens**

- (1) A suit to foreclose a tax lien is initiated and processed in much the same manner as a suit to reduce assessments to judgment.
- (2) In preparing a suit letter to the Department of Justice, Area Counsel relies on information provided in the recommendation. The Department of Justice, in turn, relies on the suit letter from Area Counsel in drafting its complaint should it decide to bring suit. Therefore, it is imperative that complete, accurate information be provided in the recommendation.

**Note:** If the recommendation is to foreclose the lien on a principal residence, the written approval of the Area Director must be provided along with the recommendation.

5.17.4.8.3.1  
(03-25-2022)  
**Tax Information,  
Description and  
Valuation of Property**

- (1) The complaint filed by the Department of Justice on behalf of the Internal Revenue Service in a suit under IRC 7403 must provide information demonstrating proper assessment and attachment of the federal tax lien, including date of assessment and demand for payment of each tax liability.

- (2) In addition to setting forth accurate tax information, the complaint must contain the correct legal description of all real estate and the best available description of personal property subject to the tax lien. The legal description of real property can be obtained from the deed recorded with the local recording office. Personal property must be adequately described to distinguish it from other property. For instance, if the property is an automobile, the description should state the make, style, year and vehicle identification number or VIN.
- (3) If the property is an insurance policy, the description should include the name of the insurance company, the contract number, the date issued, the name of insured, the name(s) of beneficiary(ies), and any other pertinent information available.
- (4) With respect to all types of property, documents related to the property, such as the title to an automobile or a copy of an insurance policy, can be helpful in describing the property accurately.

**Note:** Documents related to the property subject to the tax lien can also be helpful in identifying additional parties to be named in the foreclosure suit. For example, in some states the beneficiary of the policy is deemed to have a vested right in the policy and therefore must be named as a party to the suit.

- (5) Careful consideration should be given to assessing the value of the property. The valuation is important in ascertaining whether a suit is justified.

5.17.4.8.3.2  
(05-23-2019)

**Identification of Parties  
and Competing Liens**

- (1) The suit recommendation must identify all other persons with liens on or other interests in the property. In a lien foreclosure suit, the court adjudicates all claims against the property. Therefore, the United States must name as defendants to the suit all known persons who have liens on or claim any interest in the property subject to the tax lien. In addition, providing this information enables the attorneys reviewing the case to ascertain prior to commencement of the suit the priority of the Internal Revenue Service's tax lien and the amount of collection that can be expected.

**Note:** Because persons named as parties must be served with process, it is important to furnish their physical addresses, as well as their correct legal names. Post office box addresses are insufficient.

- (2) Complete current records checks must be conducted to identify all other persons with liens or other interests in the property.

(3)	<table> <tr> <th data-bbox="493 220 893 283">IF</th><th data-bbox="893 220 1344 283">THEN</th></tr> <tr> <td data-bbox="493 283 893 409">the party to be named is an individual doing business under another name,</td><td data-bbox="893 283 1344 409">both names should be provided, along with the home address of the individual as well as the business address.</td></tr> <tr> <td data-bbox="493 409 893 598">the party is a partnership,</td><td data-bbox="893 409 1344 598">the complete name and address of the partnership should be provided together with the individual partners' names and addresses.</td></tr> <tr> <td data-bbox="493 598 893 781">the party is a corporation,</td><td data-bbox="893 598 1344 781">the complete name and address of the corporation and its officers, state of incorporation, and statutory agent for service of process should be provided.</td></tr> </table>	IF	THEN	the party to be named is an individual doing business under another name,	both names should be provided, along with the home address of the individual as well as the business address.	the party is a partnership,	the complete name and address of the partnership should be provided together with the individual partners' names and addresses.	the party is a corporation,	the complete name and address of the corporation and its officers, state of incorporation, and statutory agent for service of process should be provided.
IF	THEN								
the party to be named is an individual doing business under another name,	both names should be provided, along with the home address of the individual as well as the business address.								
the party is a partnership,	the complete name and address of the partnership should be provided together with the individual partners' names and addresses.								
the party is a corporation,	the complete name and address of the corporation and its officers, state of incorporation, and statutory agent for service of process should be provided.								

- (4) The term “company” following the name of a business does not always mean the business has in fact been incorporated. Checking with the office of the Secretary of State in the state in which the business is located will generally confirm whether it is a corporation, local or foreign. If it is not registered, it may be doing business under a fictitious name.

5.17.4.9  
(09-08-2023)  
**Proceeding to Seize a  
Principal Residence**

- (1) A court order is required prior to the seizure of certain principal residences. IRC 6334 exempts certain principal residences from levy unless a judge or magistrate of a federal district court approves the seizure, in writing. IRC 6334(e)(1).

**Note:** IRC 6334(a)(13)(A) exempts from levy any real property used as a residence by any person (except real property which is rented) if the amount of taxes owed does not exceed \$5,000.

- (2) “Principal residence” refers to the principal residence (as defined by IRC 121) of the taxpayer, the taxpayer’s spouse, former spouse, or minor child.
- (3) A proceeding to seize a principal residence (also called a section 6334(e)(1) proceeding) is necessary in order for the Internal Revenue Service to pursue administrative collection against a principal residence. Foreclosure of the tax lien on a principal residence is still available under IRC 7403 and should still be recommended where appropriate. The two options should not be used concurrently. See IRM 5.17.4.8.
- (4) A section 6334(e)(1) proceeding is generally commenced in the same manner as suits initiated by the Internal Revenue Service to collect taxes. A recommendation is forwarded to Area Counsel, which prepares a suit letter to the Department of Justice. The information required to be provided in a lien foreclosure recommendation (see IRM 5.17.4.8.3) must be provided in a section 6334(e)(1) proceeding recommendation.

**Note:** If the residence to be seized is the principal residence of the taxpayer’s spouse, former spouse or minor child, remember to provide the name and address of that person or persons.



- (5) In addition to the information provided in connection with lien foreclosure, the recommendation must show that all the legal and procedural requirements for seizure have been met. For example, it should contain information regarding:
- the notice given to the taxpayer under IRC 6331(d).
  - any notices given or hearings conducted as required by IRC 6320 and IRC 6330.
  - the investigation of the status of the property required by IRC 6331(j).
  - alternative methods of collection considered.
  - necessary approvals

**Note:** See IRM 5.10.2.2, Securing Managerial Approval of Seizure Actions, and IRM 5.10.2.3, Judicial Approval for Principal Residence Seizures, for more information.

- (6) Seizure of a principal residence of the taxpayer, the taxpayer's spouse, former spouse, or minor child (or of any other person) requires the written approval of the Area Director. This written approval must accompany the recommendation. An example of a principal residence seizure package including a hardship discussion can be found on the Knowledge Management *Suit Resources and Examples* page.

5.17.4.10  
(08-01-2010)  
**Court Appointed  
Receiver**

- (1) A federal district court may, at the request of the United States, appoint a "receiver" when necessary or appropriate for the enforcement of the internal revenue laws. IRC 7402(a) A receiver is, generally, a disinterested party appointed for the purpose of protection or collection of property subject to competing claims. A receiver can be appointed for the general purpose of collecting a debt due the United States.
- (2) IRC 7403(d) also provides specific authority for a federal district court to appoint a receiver for the purpose of enforcing a federal tax lien against specific property or as a receiver with the powers of a receiver in equity, as further described below.

5.17.4.10.1  
(03-25-2022)  
**Types of Court  
Appointed Receivers**

- (1) There are generally two types of court appointed receivers under IRC 7403(d):
- a. The first of the two types of receivers is appointed after the lien priorities have been determined with respect to property. The Government may request a receiver to negotiate the sale of the property. The receiver is paid from the sale proceeds when approved by the court. An example would be selling securities through negotiation rather than by auction.
  - b. The second type is a receiver being requested during proceedings in a collection suit upon certification of the Secretary that such receiver is in the public interest. This authority has been delegated to the Division Counsel (Small Business/Self-Employed) who makes the certification on behalf of the Chief Counsel. This type of receiver has all the powers of a receiver in equity, including, among others, the power to conduct the business of the taxpayer, safeguard the assets of the taxpayer, and liquidate the business to pay creditors.
  - c. The taxpayer will no longer be allowed to conduct affairs or business with respect to the property subject to the lien. The receiver has complete control over the assets, subject to the court's supervision. In some cases, however, the taxpayer continues in an advisory capacity. One of the reasons for requesting that a receiver with all the powers of a receiver in

equity be appointed is to have supervision by a court officer in order to prevent waste or fraud by the taxpayer or others and to prevent, if possible, the insolvency of the business.

**Note:** It is commonly necessary for the Government to recommend a party who is to act as receiver.

5.17.4.10.2  
(03-25-2022)

#### **Duties of a Receiver**

- (1) Some of the duties of a receiver include:
  - a. conserving the property;
  - b. maintaining the business as a going concern;
  - c. liquidating the business to pay creditors;
  - d. receiving and disbursing profits or rents; and
  - e. returning the property to its owners (once rights of all parties have been satisfied).
- (2) Under IRC 6012(b) a receiver in equity, if operating the taxpayer's business, must make all the business tax returns for the partnership, corporation or individual.
- (3) If the taxpayer's property is partly located outside the jurisdiction, the receiver has the authority to take possession of all the property or to bring suit in any district where the property may be located. *28 USC 754*.

5.17.4.10.3  
(08-01-2010)

#### **Cost and Expense of Receivership**

- (1) The cost and expense of a receiver are paid from the assets of the taxpayer. Such expenses are usually substantial. Therefore, it is important to weigh this factor against the need for a receiver before making such a recommendation. It should be kept in mind that, although the receiver may be appointed at the request of the United States, the receiver is not an agent of the United States but rather is acting under the control and authority of the court.

5.17.4.11  
(08-01-2010)

#### **Intervention**

- (1) Listed below are the guidelines for intervention by the United States in pending litigation.

5.17.4.11.1  
(03-25-2022)

#### **Definition and Purpose**

- (1) IRC 7424 provides that if the United States is not a party, it may intervene in such action or suit to assert any federal tax lien arising on any property that is the subject of such action or suit.
- (2) Intervention is allowed to enable the court to settle the entire controversy. A party should be permitted to intervene if it would enable the court to try all claims in one suit.
- (3) If intervention is denied, the adjudication has no effect on the federal tax lien.
- (4) Failure to intervene could mean that property might be distributed to claimants whose rights are inferior to those of the United States. While the United States might have a right of action against these distributees, as a practical matter the chances of successfully pursuing such a legal course of action may not be good.



5.17.4.11.2  
(03-25-2022)  
**Procedure to Intervene**

- (1) A motion is filed with the appropriate court for leave to intervene. If granted, a petition of intervention is filed asking for a determination of the conflicting claims and liens together with an order entered by the court decreeing the sale of the property, if necessary. Intervention must be taken generally under the same conditions as attach to the commencement of an original suit under IRC 7401 and IRC 7403. It must be authorized or sanctioned by the Chief Counsel and directed by the Attorney General. The United States intervenes as a party plaintiff.
- (2) In any case in which the United States intervenes, the same procedural rules as provided in *28 USC 2410* apply as if the United States had been initially joined properly as a party.

5.17.4.12  
(08-01-2010)  
**Action to Enforce a Levy**

- (1) Listed below are the guidelines for bringing an action to enforce a levy.

5.17.4.12.1  
(03-25-2022)  
**Nature of Proceeding**

- (1) Under IRC 6331, the Area Director may collect by levy any tax owed by a person liable to pay such tax who refuses to do so within 10 days after notice and demand and certain other procedural requirements. The levy may be made upon any property belonging to such person or on property on which there is a federal tax lien.
- (2) Under IRC 6332(a), any person in possession of, or otherwise obligated with respect to, property or rights to property subject to levy is required to surrender such property upon levy (except any property subject to prior judicial attachment or execution). Thus, a suit to enforce a levy is generally brought against a third party, not against the taxpayer (e.g., the taxpayer's employer fails to honor a levy served to reach the taxpayer's wages).

5.17.4.12.2  
(03-03-2023)  
**Defenses for Failure to Comply**

- (1) The defendant in a suit for failure to honor a notice of levy has only two defenses:
  - a. the defendant is not in possession of the taxpayer's property; or
  - b. the taxpayer's property is subject to a prior judicial attachment.

United States v. Sterling National Bank & Trust Co. of N.Y., 494 F.2d 919 (2nd Cir. 1974); In re Dell W. Carlson, 580 F.2d 1365 (10th Cir. 1978). The allegation of lien priority is not a defense. If parties served with levies believe their claim has priority they can bring a suit under IRC 7426 for wrongful levy. Virgin Islands Bureau of Internal Revenue v. Chase Manhattan Bank, 312 F.3d 131, 139 (3d Cir. 2002).
- (2) The defendant in a suit for failure to honor a levy is not permitted to raise defenses ordinarily available in actions directly instituted against the taxpayer for collection of the tax, such as constitutionality, amount, or validity of the assessment, or the statute of limitations. United States v. Bank of Shelby, 68 F.2d 538; (5th Cir. 1934); United States v. Citizens and Southern National Bank, 538 F.2d 1101 (5th Cir. 1976); United States v. Prudential Insurance Co. of America, 461 F.2d 208 (5th Cir. 1972).
- (3) IRC 6332(e) makes clear the legal effect of honoring a levy. A person levied upon who makes payment or delivery to the Area Director pursuant to levy is discharged from any obligation or liability to the taxpayer and any other person with respect to the property or rights to property arising from such payment or

delivery. This even includes cases when the Internal Revenue Service levies on property under an assessment that is incorrectly determined.

- (4) Similarly, when a person incurs personal liability under IRC 6332(d)(1) for failure to honor a levy and subsequently pays this liability, they are discharged from any obligation or liability to the delinquent taxpayer and any other person. However, IRC 6332(d) does not relieve from liability any person who surrenders to the United States property or rights to property belonging to a third party where the delinquent taxpayer has no apparent interest in that property.
- (5) When property has been wrongfully levied, the owners may secure the administrative relief provided for in IRC 6334(b) (return of property wrongfully levied upon) or may bring suit to recover their property under IRC 7426 (wrongful levy suit against the United States).

5.17.4.12.3  
(03-25-2022)  
**Liability for Failure to Comply**

- (1) IRC 6332(d)(1) provides that any person who fails or refuses to surrender property subject to levy shall be personally liable in an amount equal to the value of that property (but not exceeding the total amount of the tax liability with respect to which the levy was made). Recovery in a suit to enforce a levy (other than costs) is to be credited against the delinquent tax liability.
- (2) IRC 6332(d)(2) provides for the imposition of a 50-percent penalty by suit in addition to the personal liability described above when a person fails or refuses to surrender property without reasonable cause. The person will be liable for a penalty equal to 50-percent of the amount recoverable in the suit to enforce the levy. No part of this penalty is credited against the tax liability for the collection of which levy was made. The penalty is not applicable if there is a bona fide dispute or reasonable cause for the failure or refusal to surrender the property. When a court determined that a bank could not set off against a taxpayer's checking account after that account had been levied upon, the court declined to impose the 50-percent penalty, but warned that in the future, in like circumstances, no reasonable cause would exist to prevent the assertion of the penalty. *United States v. Sterling National Bank*, 494 F.2d 919 (2nd Cir. 1974).
- (3) In view of the severity of the 50-percent penalty, the recommendation for its assertion should generally be made only when the failure or refusal to surrender the property levied upon is arbitrary or capricious, or when the alleged dispute over the amount owing or the legal effectiveness of the levy is frivolously raised. Questions concerning the appropriateness of assertion of the penalty should be referred to Area Counsel.

5.17.4.12.4  
(09-08-2023)  
**Initiation of Suit**

- (1) The Internal Revenue Manual sets forth the general procedures to be followed in recommending a suit under IRC 6332. Jurisdiction is in the United States district courts. 28 USC 1345. A suit for failure to honor a levy should not be recommended if use of an administrative process to collect the tax would prove adequate. An example of a recommendation to enforce a levy can be found on the Knowledge Management *Suit Resources and Examples* page.
- (2) As a general rule, resort to suit under IRC 6332 is made when the party in possession of the taxpayer's property disposes of it subsequent to the levy. If the party in possession retains possession of the taxpayer's property, then consideration should be given to a suit to enforce the Internal Revenue Service's lien against the property under IRC 7403. Questions relative to the type of suit to recommend in doubtful cases should be referred to Area Counsel.

**Note:** Where a person served with a notice of levy retains the property under a good faith belief that they or parties other than the taxpayer may have a claim against the property superior to the federal tax lien, a suit under IRC 7403 is generally more appropriate than a suit under IRC 6332 for failure to honor a levy. In a lien foreclosure action, the court determines the interests of all parties in the property.

- (3) If the notice of levy was duly and timely served prior to the expiration of any collection period running against the taxpayer as provided in IRC 6502(a), then the personal liability arising from a dishonor of that notice of levy may in any appropriate case be enforced at any time without limitation, notwithstanding any subsequent expiration of the normal or extended period of limitations on collection against the taxpayer. *United States v. Weintraub*, 613 F.2d 612, 619 (6th Cir. 1979).

5.17.4.13  
(03-03-2023)  
**Writs of Entry**

- (1) The Supreme Court held in *G.M. Leasing v. United States*, 429 U.S. 338 (1977) that an entry without a warrant onto the private areas of personal or business premises of a taxpayer for the purpose of seizing property to satisfy a tax liability is in violation of the Fourth Amendment to the Constitution of the United States.
- (2) The purpose of the revenue officer's entry is to seize property in satisfaction of unpaid taxes, not rummage everywhere in search of seizable items once lawfully on the premises. *United States v. Condo*, 782 F.2d 1502 (9th Cir. 1986).
- (3) Revenue officers must either secure written consent to enter private premises or a court order permitting the entry. The revenue officer should obtain a consent to enter from an adult occupant of the premises. Generally, the revenue officer should attempt to obtain consent unless the officer believes that advance notice will jeopardize their safety, or attempts to contact the taxpayer or occupant of the premises have failed.
- (4) A writ of entry obtained from the court authorizes the revenue officer to enter the premises identified in the officer's affidavit or declaration. The affidavit or declaration presented to the court will identify the property or types of property the officer intends to seize, and thus the affidavit or declaration and the writ order limit the scope of the seizure.
- (5) Private portions of premises can be entered without a writ of entry if the revenue officer observes situations that indicate exigent circumstances, such as the taxpayer removing property beyond the reach of the Service under circumstances that are not in the ordinary course of business. *G.M. Leasing v. United States*, *supra*.

**Note:** Area Counsel must be consulted before entering without a writ of entry.

- (6) See also IRM 5.10.3.7, Writ Procedures.

5.17.4.14  
(03-25-2022)  
**Suits to Recover  
Erroneous Refunds**

- (1) IRC 7405 authorizes the Service to bring a civil suit to recover any money erroneously refunded to a taxpayer or a third party.
- (2) Interest on erroneous refunds is provided for at the underpayment rate under IRC 6602.

- (3) The suit may be brought even if the erroneous refund was issued as a result of the Service's error with no wrongdoing on the part of the taxpayer.
- (4) No assessment is necessary to bring an erroneous refund suit.
- (5) Filing an erroneous refund suit is not the only way the Service may recover an erroneous refund. Refer to IRM 5.1.8.7.1.3, Unassessable Erroneous Refunds Recovery Procedures.
  - a. The type of erroneous refund determines the applicable statutes of limitations and the means by which the Service can recover the erroneous refund.
  - b. Assessable erroneous refunds may be assessed and collected administratively within the applicable period of limitations on assessment and collection. Refer to IRM 5.1.8.7.1.1.1, Assessable Erroneous Refunds.
  - c. Recovery by suit should be considered only if administrative recovery is barred by the statute of limitations or the erroneous refund is unassessable, and the criteria for filing a suit in IRM 25.3.2.3(5), Criteria for Bringing Suit, is met. Refer also to IRM 5.1.8.7.1, Recovery of Unassessable Erroneous Refunds, and IRM 25.3.2, Suits by the United States.

5.17.4.14.1  
(05-23-2019)  
**Burden of Proof**

- (1) The Internal Revenue Service has a burden of proof with respect to all the elements of the erroneous refund suit. The Service must show that the refund was erroneous, the amount of the refund, and that the taxpayer received or benefited from the erroneous refund. *Soltermann v. United States*, 272 F.2d 387 (9th Cir. 1959).

5.17.4.14.2  
(03-25-2022)  
**Statute of Limitations for Commencing Suit**

- (1) IRC 6532(b) provides:  
 "Suits by United States for Recovery of Erroneous Refunds. — Recovery of an erroneous refund by suit under section 7405 shall be allowed only if such suit is begun within 2 years after the making of such refund, except that such suit may be brought at any time within 5 years from the making of a refund if it appears that any part of the making of the refund was induced by fraud or misrepresentation of a material fact."
- (2) The Service generally has two years from the date the taxpayer receives the erroneous refund to bring the erroneous refund suit. *O'Gilvie v. United States*, 519 U.S. 79 (1996).
- (3) The Service has five years to bring the erroneous refund suit if any part of the erroneous refund was "induced by fraud or misrepresentation of a material fact." *Lane v. United States*, 286 F.3d 723 (4th Cir. 2002).
  - a. Fraud is defined as "an intentional misrepresentation, concealment or nondisclosure for the purpose of inducing another [Internal Revenue Service] ... to part with some valuable thing [e.g., money]."
  - b. Misrepresentation is defined as "an untrue, incorrect, or misleading representation." Webster's Third New International Dictionary (Third Edition 1986). The representation can be in a form of a statement, assertion, or a failure to disclose relevant information. It need not be intentional, but it must be regarding a fact (not law) that is material or essential to the Service's decision to issue the erroneous refund. See *United States v. Indianapolis Athletic Club, Inc.*, 785 F. Supp. 1336 (S.D. Ind. 1991).

5.17.4.14.3  
(09-08-2023)  
**Initiating Suit for  
Recovery of Erroneous  
Refund**

- (1) Recommendations for suits of this nature are forwarded to Area Counsel as are other recommendations for commencement of legal proceedings. See IRM 25.3.2, Litigation and Judgments, Suits by the United States, and IRM 5.1.8.7.1.3.4, Recommend a Civil Suit.
- (2) An example of a recommendation to recover an erroneous refund can be found on the Knowledge Management *Suit Resources and Examples* page.

5.17.4.15  
(03-25-2022)  
**Action to Quiet Title**

- (1) The Government may acquire title to property through the enforcement of a tax lien. This may occur, for example, when the property is sold at a distraint sale, the minimum price is not met by the highest bidder, and the Government bids in the property. This may also occur when there is a non-judicial foreclosure sale, and the Government exercises its right to redeem pursuant to IRC 7425(d).
- (2) In order to increase the amount that property will bring at a sale by the Government, express authority has been given to the Government under IRC 7402(e) to bring an action to quiet title to property it has acquired through the enforcement of a tax lien. An action to quiet title is brought to clarify, with finality, who holds title to real property. Jurisdiction in cases of this type is in the federal district courts.

**Note:** An order quieting title can also be sought in conjunction with a lien foreclosure action if there are clouds on the title to the property.

5.17.4.16  
(08-01-2010)  
**Assertion of Liability  
against Fiduciaries**

- (1) The following provides procedures for collection from fiduciaries.
- (2) The definition of fiduciary, duties and responsibilities and available remedies are discussed below.

5.17.4.16.1  
(03-25-2022)  
**Definition of a Fiduciary**

- (1) The definition of a fiduciary provided in IRC 7701(a)(6) includes: a guardian, trustee, executor, administrator, receiver, conservator, or any person acting in any fiduciary capacity for any person.

5.17.4.16.2  
(03-25-2022)  
**Duties and  
Responsibilities of a  
Fiduciary**

- (1) The duties of a fiduciary depend on the type of fiduciary capacity in which the fiduciary acts (e.g., trustee, executor of decedent's estate). They generally include:
  - a. prompt collection and marshaling of assets;
  - b. custody, preservation and management of assets; and
  - c. payment of debts.
- (2) 26 CFR 301.6903-1(a) requires that every person acting for another person in a fiduciary capacity shall give notice thereof to the Area Director in writing. Written notice is also required to advise the Area Director when the fiduciary relationship has terminated. 26 CFR 301.6903-1(b).
- (3) IRC 6012(b) requires the filing of income tax returns by fiduciaries who have full control and custody of the property of a taxpayer.

5.17.4.16.3  
(03-03-2023)  
**Liability of Fiduciaries  
under 31 USC 3713**

- (1) *31 USC 3713* makes a representative (e.g., sometimes referred to as a fiduciary) of an insolvent estate (such as an insolvent decedent's estate) personally liable for debts due to the United States if the fiduciary pays any debt owed by the estate without first paying priority debts of the United States of which the fiduciary is aware. A fiduciary must first pay known debts to the United States or risk personal liability if they fail to do so.
- (2) IRM 5.17.13, *Insolvencies and Decedents' Estates*, explains the United States' priority and the liability of the fiduciary under 31 USC 3713 in detail. This section deals generally with the duties of the fiduciary and the assessment and collection of the liability imposed by *31 USC 3713*.
- (3) The liability of a fiduciary is not dependent upon any benefit the fiduciary may or may not receive from the estate. The amount of liability is to the extent of the payments the fiduciary made of debts over which the United States was entitled to priority under *31 USC 3713* or to the amount which may remain due and owing the United States on its claim, whichever is the lesser.

5.17.4.16.4  
(03-25-2022)  
**Establishing a  
Fiduciary's Liability**

- (1) A fiduciary's liability may be established through administrative procedures or through suit.
- (2) Liability may be established administratively through the notice and assessment procedures under IRC 6901.
- (3) IRC 6901 provides that the liability of a fiduciary may be assessed as any other tax, and notice and demand may be issued and collection may be effected by levy if necessary. However, the liability of the fiduciary must be assessed within one year after the fiduciary liability arises or within the 10-year period for collection of the tax in respect of which such fiduciary's liability arises, whichever is later. The fiduciary may execute a waiver to extend the period of limitations for assessment. Where income, estate and gift taxes are involved, the fiduciary is entitled to a notice of fiduciary liability and an opportunity to file a petition with the Tax Court for a redetermination of the liability asserted against the fiduciary.
- (4) A suit may also be filed in court against the fiduciary under IRC 7402(a) to collect the amount of the fiduciary's liability.

**Caution:** Department of Justice has jurisdiction over cases referred to them for litigation. A transferee judgment under *31 USC 3713* where no underlying assessed liability of federal tax lien exists cannot be collected administratively (IRM 25.3.5.7, *Procedures for Judgments for Unassessable Liabilities*). An administrative IRC 6901 assessment is inappropriate unless the Department of Justice has closed their litigation case file. Then, it may be considered if it is within the 10 year period for collection of the underlying income, estate, gift, or certain employment taxes giving rise to the fiduciary's liability.

5.17.4.17  
(03-25-2022)  
**Civil Injunctions under  
IRC 7402(a) to Restrain  
Pyramiding**

- (1) An injunction is a court order that requires a party either to refrain from certain actions or to perform certain actions. Federal district courts have jurisdiction to issue injunctions under IRC 7402(a). Injunctions can be obtained to restrain the future conduct of any person when necessary or appropriate to enforce the internal revenue laws. *United States v. Ernst & Whinney*, 735 F.2d 1296, 1300–1301 (11th Cir. 1984), cert. den., 470 U.S. 1050 (1985); *United States v.*



Hart, 701 F.2d 749 (8th Cir. 1983); and United States v. Ekblad, 732 F.2d 562 (7th Cir. 1984). Suits for injunctions may be appropriate against employers and their responsible officers who have a history of pyramiding federal trust fund taxes and who continue to do so.

5.17.4.17.1  
(03-03-2023)  
**Standards for Injunctive Relief under IRC 7402(a)**

- (1) A plaintiff must be able to show “irreparable harm” and that it has no adequate remedy at law to obtain an injunction. The Service has presented proof on “irreparable harm” satisfying these standards in trust fund cases referred for injunction. In addition the Service’s practice has been to limit injunction suits against trust fund pyramiding to cases where the amount of tax due is significant, and the Service has first exhausted all administrative means to collect the taxes. Before seeking an injunction the Service should:
  - a. Exhaust all administrative remedies,
  - b. Consult with Counsel where the taxpayer has previously abandoned other business ventures, leaving unpaid and uncollectible tax liabilities, and
  - c. Refer to IRM 5.7.2, Trust Fund Compliance, Letter 903 Process, and IRC 25.1.8.3, Trust Fund Violations.
- (2) The court will focus on two critical factors: first, the defendant’s persistent failure to comply with employment tax laws after repeated administrative efforts to effect voluntary compliance, and second, the reasonable likelihood that the defendant will continue to pyramid trust fund liabilities. United States v. Buttorff, 761 F.2d 1056, 1062 (5th Cir. 1985) and United States v. Kaun, 827 F.2d 1144, 1149–50 (7th Cir. 1987). Accordingly, requests for injunctions against a trust fund violator should show:
  - a. the violation is not an isolated occurrence, but part of a pattern of past violations including, where applicable, evidence of prior assessments and penalties;
 

**Reminder:** While past violations are what a court will focus on, it is important to remember that monitoring of the taxpayer’s compliance is an on-going task both during and after any court decision. Compliance monitoring includes during the recommendation preparation and submission, court action, and after the court has issued its order.
  - b. the defendant is clearly a “responsible person” with respect to the pyramided taxes;
  - c. the defendant’s activities place them in a position where continued violations can be anticipated, and
  - d. the anticipated violations jeopardize the effective enforcement of the employment tax laws.

5.17.4.17.2  
(09-08-2023)  
**Types of Injunctive Relief against Trust Fund Pyramiding**

- (1) In past trust fund pyramiding cases, the Internal Revenue Service has first sought a preliminary injunction against in-business taxpayers preventing them from:
  - a. failing to timely pay their future corporate income tax, FUTA tax, and withholding and FICA tax liabilities;
  - b. transferring any money or property to any other entity to have that entity pay the salaries or wages of the defendants’ employees; and

- c. assigning any property or making any payments after the preliminary injunction is issued until the trust fund liabilities, accruing after the preliminary injunction, are first paid to the Service.
- (2) The individual defendants and other persons authorized to disperse company funds have been required monthly to sign and deliver to the Service statements that they have read the court's preliminary injunction order and will obey it.
- (3) The Justice Department has also asked district courts to issue preliminary injunctions authorizing the Service to enter defendants' premises and seize and sell corporate property if the defendants violate the injunction. Such violations may result in further court proceedings against the violator for civil or criminal contempt, including the possibility of imprisonment. If a district court judge is initially unwilling to imprison the principals of a failing business for violating a preliminary injunction, the court may be willing to order the failing company (through its principals) to file a bankruptcy petition for immediate liquidation and appointment of a trustee.
- (4) It may be appropriate for the Internal Revenue Service to initiate an injunction against certain corporate principals who have a pattern of creating new companies after the Service (or other creditors) seek to collect overdue accounts from an existing corporation. See, *United States v. Wolf*, 93 AFTR2d 2004-2417 (W.D. Okla. 2004) (Professional employer organization enjoined where it underpaid client's trust fund liability, diverted funds to related corporations, and left only a shell). Under these circumstances, the Internal Revenue Service may initiate seeking an injunction requiring the principals to, among other things, notify the Service if they acquire, manage, or work for another company in the next five years (or other appropriate time period). *Id.* See *United States v. Campbell*, 897 F.2d 1317, 1323–1324 (5th Cir. 1990), for an injunction case sustaining affirmative duties of this nature under IRC 7408.
- (5) An example of a recommendation to pursue an injunction to prevent Trust Fund pyramiding can be found on the Knowledge Management *Suit Resources and Examples* page.

5.17.4.17.3  
(05-23-2019)

#### **Injunction Monitoring**

- (1) Injunctions are generally issued for a period of time (e.g., five years), during which the taxpayer must be monitored for violations of the injunction.
- (2) The injunction may provide that certain violations, if cured within a specified period of time and limited to a specific number of violations, will not default the judgment. Where violations are not cured or surpass the number allowed, the injunction will be in default.
- (3) Compliance monitoring would include items such as found in IRM 5.17.4.17.2(1). See also IRM 25.3.2.6.2.
- (4) Violations causing a defaulted injunction may result in further court proceedings against the violator for civil or criminal contempt, including the possibility of imprisonment. If a district court judge is initially unwilling to imprison the principals of a failing business for violating a preliminary injunction, the court may be willing to order the failing company (through its principals) to file a bankruptcy petition for immediate liquidation and appointment of a trustee.



**Exhibit 5.17.4-1 (03-25-2022)****IRM 5.17.4 Legal Revenue Officer Guide — Suits by U.S. -- Limitation Upon Assessment*****Assessment Type: Income, Estate, Gift, Employment, and Miscellaneous Excise***

<b>Circumstances Involved</b>	<b>Code Section</b>	<b>Time Limit</b>
(a) General rule	IRC 6501(a)	3 years after return is filed. See notes below regarding filing dates of early returns and quarterly employment taxes.
(b) Request for prompt assessment of any tax for which a return is required (other than the estate tax) by a decedent, or by his/her estate; or by a corporation undergoing dissolution.	IRC 6501(d)	18 months after request, but request cannot be made before return is filed. Limited to 3 years after return is filed.
(c) Omission of 25 percent of gross amount.	IRC 6501(e)	6 years after return is filed.
(d) False or fraudulent return with intent to evade tax.	IRC 6501(c)(1)	No limitation.
(e) Willful attempt to evade tax (other than income, estate or gift tax).	IRC 6501(c)(2)	No limitation.
(f) Failure to file return.	IRC 6501(c)(3)	No limitation.
(g) Agreement in writing executed before expiration of period prescribed for assessment between Commissioner and taxpayer to extend period.	IRC 6501(c)(4)	Assessment may be made at any time prior to expiration of the agreed time.
(h) Assessment of liability of initial transferee.	IRC 6901(c)(1)	1 year after expiration of period of limitation against the transferor.
(i) Assessment of a transferee of a transferee.	IRC 6901(c)(2)	1 year after expiration of period against preceding transferee, but not more than 3 years after expiration of period for assessment against the initial transferor; or, if applicable, one year after the return of execution in a collection court proceeding against a prior transferor.
(j) Assessment of liability of fiduciary.	IRC 6901(c)(3)	1 year after the liability arises, or before the expiration of the period for collection of the tax, whichever is later.

**Exhibit 5.17.4-1 (Cont. 1) (03-25-2022)****IRM 5.17.4 Legal Revenue Officer Guide — Suits by U.S. -- Limitation Upon Assessment**

<b>Circumstances Involved</b>	<b>Code Section</b>	<b>Time Limit</b>
(k) Where Commissioner and transferee or fiduciary agree to extend period of assessment prior to expiration of period for assessment.	IRC 6901(d)(1)	At any time during agreed period.
(l) Where taxpayer deceased or corporation dissolved.	IRC 6901(e)	Same period as if death or dissolution has not occurred.

***Assessment Type: Trust Fund Recovery Penalty***

<b>Circumstances Involved</b>	<b>Code Section</b>	<b>Time Limit</b>
General rule	IRC 6672(b)(3) IRC 6501(a)	Same as IRC 6501(a) limit for underlying business returns reflecting withheld or collected tax, but not before the later of--(a) the date 90 days after the date on which timely penalty notice was given, or (b) if there is a timely protest of the proposed assessment, the date 30 days after final administrative determination.

See below for additional assessment statute clarification:

1. The period of limitations for assessment is suspended on the date that a statutory notice of deficiency is mailed to the taxpayer under IRC 6213(a). If no petition is filed with the Tax Court, the suspension continues for 150 days (210 days if the taxpayer lives outside of the United States). See IRC 6213(a) and IRC 6503(a). If a petition is filed, the suspension continues until sixty days after the decision of the Tax Court becomes final. IRC 6503(a)(1) (income, estate and gift tax); IRC 6901(f) (fiduciaries and transferees).
2. Returns, other than employment tax returns, filed before the due date will be considered as filed on the last date provided by law. IRC 6501(b)(1).
3. For purposes of IRC 6501, a return filed before the due date is considered filed on the due date. IRC 6501(b)(1).
4. For purposes of IRC 6501, employment tax returns for any period of a calendar year, filed before April 15 of the succeeding year, will be considered as filed on April 15 of such succeeding year. IRC 6501(b)(2).
5. See IRM 25.6.1.9, Statute of Limitations, Assessments, for more information regarding the statute of limitations on assessment.

## Exhibit 5.17.4-2 (03-03-2023)

## IRM 5.17.4 Legal Revenue Officer Guide — Suits by U.S. -- Limitation Upon Collection

***Collection Type : Income, Estate, Gift, Employment and Miscellaneous Excise***

<b>Circumstances Involved</b>	<b>Code Section</b>	<b>Time Limit</b>
(a) Where assessment timely made, tax may be collected by levy or by a proceeding in court.	IRC 6502(a)	Within 10 years after assessment. Note: The authority to extend the collection period by waiver was curtailed by RRA 98. See IRM 5.17.4.5, above.
(b) Judgment rendered against the taxpayer arising out of assessed tax liability.	IRC 6502.(a)	Period for collection by <i>levy</i> is extended and does not expire until the liability for the tax (or a judgment against the taxpayer arising from such liability) is satisfied or becomes unenforceable. NOTE: The period for collecting on a federal <i>judgment lien</i> generally is 20 years from the date that the judgment lien arises. 28 USC 3201(c)(1). With the court's approval, however, the judgment lien may be renewed once for an additional 20 years. 28 USC 3201(c)(2).
(c) Assets of taxpayer in control or custody of court.	IRC 6503(b)	Suspended for period assets of taxpayer (including the assets of the estate of a decedent or of an incompetent) are in the control or custody of the court in any proceeding before any court of the United States or any state and for 6 months thereafter.
(d) Taxpayer outside the United States for a continuous period of at least 6 months.	IRC 6503(c)	Suspended during the period of taxpayer's absence from the country if such period is for a continuous period of at least 6 months. If at time of taxpayer's return, period for collection would expire before expiration of 6 months from date of return, period is not to expire until 6 months after the date of their return. Accord 26 CFR 301.6503(c)-1. See IRM 5.1.19.3.7, Taxpayer Living Outside the U.S, for more information.

**Exhibit 5.17.4-2 (Cont. 1) (03-03-2023)****IRM 5.17.4 Legal Revenue Officer Guide — Suits by U.S. -- Limitation Upon Collection**

<b>Circumstances Involved</b>	<b>Code Section</b>	<b>Time Limit</b>
(e) Property of third party wrongfully seized or received by the Internal Revenue Service.	IRC 6503(f)	Suspended during period from date of wrongful seizure or receipt to date property administratively returned to taxpayer pursuant to IRC 6343(b) or date on which a final judgment to the effect that levy was wrongful is secured pursuant to IRC 7426(a)(1) and for 30 days thereafter. The suspension is only as to that part of the assessment equal to the amount of money or value of specific property returned.
(f) Taxpayer files bankruptcy.	IRC 6503(h)	Suspended for the period during which the IRS is prohibited from collecting by reason of the bankruptcy case and for 6 months thereafter.

See note for additional information.

**Note:** This exhibit lists some of the more common suspensions under IRC 6503. Other paragraphs of IRC 6503 and other IRC sections result in suspensions of the collection statute, including, but not limited to, IRC 6503(j), IRC 6015(e)(2), IRC 6330(e)(1), IRC 6331(i)(5), IRC 6331(k)(3)(B), IRC 6672(c)(4), IRM 7508, and IRC 7508A. See IRM 5.1.19, Collection Statute Expiration, for additional information.