



MANUAL TRANSMITTAL

Department of the Treasury
Internal Revenue Service

5.20.6

NOVEMBER 21, 2016

EFFECTIVE DATE

(11-21-2016)

PURPOSE

- (1) This transmits revised IRM 5.20.6, Abusive Tax Avoidance Transactions, Whipsaw Assessments.

MATERIAL CHANGES

- (1) IRM 5.20.6.1.4(5): updated link to locate CCP addresses.

EFFECT ON OTHER DOCUMENTS

This material supersedes IRM 5.20.6 dated 2-18-2014.

AUDIENCE

The target audience is SB/SE Collection employees.

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5.20.6

Whipsaw Assessments

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5.20.6.1
(02-18-2014)
Whipsaw Assessments

- (1) Whipsaw statutory notices of deficiency assessments are a technique utilized by examination when auditing an abusive trust situation where a taxpayer has attempted to reduce or eliminate their tax liability through the use of one or more layers of trust entities.
- (2) A whipsaw assessment is used when the subjects of the examination refuse to cooperate with the Service and the Service is unable to accurately determine the correct and agreed tax owed by each entity. The Service will issue notices of deficiency (one to the individuals, one to the business trust, and one to the family trust), taxing the same income to each entity.

5.20.6.1.1
(09-21-2005)
Background

- (1) Prior to the current use of whipsaw notices, examination would issue notices of deficiency to the individuals only, collapsing the trust income to their individual return. This would result in an assessment against individuals who had no apparent sources of income and no legal title to property. No assessment would be made against the business trust (which had the income stream) or the family trust (which had legal title to the property).

5.20.6.1.2
(09-21-2005)
Use of Whipsaw

- (1) With the present use of whipsaw notices, examination issues notices of deficiency to each of the related entities. If none of the entities appeal, then the assessments are made separately against each of the related entities. This allows collection directly against each entity, rather than through the use of nominee liens, alter ego, etc.
- (2) Alternatively, if the related cases are petitioned to the Tax Court they will be consolidated for trial and the Service will have a federal court opinion stating that the arrangement is a sham.
- (3) If it is later found that the trusts are valid, the whipsaw assessments will be reduced to the appropriate amounts.

5.20.6.1.3
(09-21-2005)
Identification of Key and Related Cases on IDRS

- (1) Generally, the use of whipsaw assessments means that the tax may be assessed multiple times against separate trust entities, but the liability will only be collected once. The key case and related case(s) should be controlled by a single revenue officer to monitor payments and prevent over-collection of the liability. If more than one revenue officer is assigned the key and related cases due to the locality of the separate entities, close coordination should take place between the revenue officers, and include the group manager(s), collection ATAT coordinator(s), and ATAT territory manager(s) when needed.
- (2) When a revenue officer is assigned an ATAT case, especially on a trust (Form 1041) assessment, research should be done to ensure any and all related assessments are found. Other related assessments may be pending in appeals, in the Tax Court, in the queue, in the notice process, or in the hands of another revenue officer. The revenue officer will coordinate with the other function(s) or collection employees and ensure all related entities are addressed appropriately. When possible, it is recommended that the key and related entities all be worked by the same revenue officer.
- (3) Research should be conducted to find the related entities. Request TXMODA on the open module and look for TC 971 with an action code of 266 (key case – usually IMF) or 267 (related entity). Immediately following will be a related entity TIN, TX-PRD, and MFT.

5.20 Abusive Tax Avoidance Transactions (ATAT)

- (4) IDRS command code AMDISA should also be researched. The most common project code that will indicate a possible whipsaw assessment is SPCL-PROJ>0233 for Abusive Trust Arrangements. Generally, if the disposal code (DISP-CD>) shown on AMIDSA is other than 07 – Appealed, 10 – Defaulted, 11 – Petitioned, or 13 – Undeliverable, there will not be related whipsaw assessments.
- (5) It is important to request the Revenue Agent Report (RAR) when working an ATAT case. Pertinent asset and other identifying information is provided in the RAR and related case document. A flowchart or list of the names and TINs of all the related whipsaw entities may also be provided in the RAR.

5.20.6.1.4 (11-21-2016) Collecting Against Whipsaw Assessments

- (1) As discussed in IRM 5.20.6.1.3, with whipsaw assessments the same income is the basis for assessments against multiple entities. This results in several Bal Due accounts being generated, all with a tax based on the same income. The revenue officer assigned the case needs to coordinate collection actions to prevent over collection of the liability. The liability that has been assessed against multiple entities may be collected only once, either entirely from one entity, or in part from the different entities assessed.
- (2) The amount assessed against each entity may differ depending on the approach used by Examination. In some instances all income will be assigned to each entity and each assessment will be identical. See Example 1 below. In other circumstances only the actual income attributed to each trust will be used as the basis for the trust's income. See Example 2 below. In both situations, all income will be assigned to the taxpayer's individual income tax return.

Example: 1 - All income assigned to each trust entity. The audit investigation established the following for the various trusts created by the taxpayer:

- Residence Trust - \$50,000 income/receivables
- Business Trust - \$150,000 income/receivables
- Rental Trust - \$75,000 income/receivables
- Taxpayer - \$25,000 income/receivables

In this example, income of \$300,000 will be assigned to all four entities resulting in identical assessments for all four entities.

Example: 2

- Residence Trust - \$50,000 income/receivables
- Business Trust - \$150,000 income/receivables
- Rental Trust - \$75,000 income/receivables
- Taxpayer - \$25,000 income/receivables

In this example each trust would be assessed only the income directly attributed to that specific trust, e.g. Residence Trust \$50,000, but the taxpayer would still be assessed based on the income from all the trusts; \$300,000.

- (3) If the taxpayer becomes cooperative during the collection process, the taxpayer should be encouraged to collapse the sham trusts, return all assets back into the taxpayer's name, and file corrected returns properly capturing all income on their individual income tax return. If this is done, the revenue officer should work with the revenue agent so that the duplicate trust assessments are abated and the proper tax is reflected on the corrected return.

- (4) When the taxpayer is uncooperative, the revenue officer will need to take additional steps to abate the duplicate assessments once the liability has been collected in full. Because whipsaw assessments are based on the Service's inability to accurately determine the correct tax owed by each entity, the revenue officer should not abate any liabilities until the expiration of the two year period during which the taxpayer can file a claim for refund of any monies applied to the accounts.
- (5) After collecting the full liability, the revenue officer will prepare but not process, Form 3870, *Request for Adjustment*, which will abate the duplicate liabilities once the refund period has expired. If needed, the revenue officer will secure the approval to abate the tax from Exam. The revenue officer will report the remaining entities Currently Not Collectible (CNC) with a mandatory follow-up two years from the final payment received to full pay the account. The completed and unprocessed Form 3870 will be included in the case file the revenue officer sends to Centralized Case Processing (CCP). The CCP address can be found at this link <http://mysbse.web.irs.gov/collection/ccpcoll/ mailingprocedures/21073.aspx>. See IRM 5.16.1.6, *Mandatory Follow Up*, for complete information on processing mandatory follow-ups.
- (6) The CNC closing code should be 12, Unable to Contact. When a CNC case is closed through ICS with a mandatory follow-up request, after managerial approval, ICS systemically creates a Non-Field OI and assigns it to CCP. The revenue officer then sends the paper file to CCP. CCP will monitor the follow-up. The specific follow-up action should request the case file be returned to the Group Manager so the case can be assigned and a determination made on whether or not it is appropriate to abate the remaining liabilities.
- (7) When the case is returned the revenue officer will review IDRS transcripts for all whipsaw related entities. This will include closed entities, especially any entities closed based on full payment. The purpose of this review will be to determine if there have been any claims for refund filed by the taxpayer. This can be determined by reviewing the TXMODs for any TC 520s. If any TC 520s are present, the revenue officer should research the closing code and contact Advisory for closing codes 70 through 80 except for closing codes 76 and 77 (Collection Due Process). Contact Insolvency for closing codes 60 - 69 and 81 - 89 and contact Appeals for closing codes 76 and 77 to determine the nature of the litigation and if the abatement request should be processed. If there are no TC 520s on any of the modules then the Forms 3870 should be processed and the case closed.

