



# MANUAL TRANSMITTAL

Department of the Treasury  
Internal Revenue Service

5.20.6

OCTOBER 2, 2024

## EFFECTIVE DATE

(10-02-2024)

## PURPOSE

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

## MATERIAL CHANGES

- (1) IRM 5.20.6.1 revised to add internal controls information.
- (2) Editorial corrections and updates throughout the IRM.

## EFFECT ON OTHER DOCUMENTS

This material supersedes IRM 5.20.6 dated November 21, 2016.

## AUDIENCE

The target audience is SB/SE Collection employees.

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Acting Director, Collection Policy  
Small Business/Self-Employed



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5.20.6

Whipsaw Assessments

## Table of Contents

### 5.20.6.1 Program Scope and Objectives

#### 5.20.6.1.1 Background

#### 5.20.6.1.2 Authority

#### 5.20.6.1.3 Roles and Responsibilities

#### 5.20.6.1.4 Program Management and Review

#### 5.20.6.1.5 Program Controls

#### 5.20.6.1.6 Terms and Acronyms

#### 5.20.6.1.7 Related Resources

### 5.20.6.2 Whipsaw Assessments

#### 5.20.6.2.1 Background

#### 5.20.6.2.2 Use of Whipsaw

#### 5.20.6.2.3 Identification of Key and Related Whipsaw Cases

#### 5.20.6.2.4 Collecting Whipsaw Assessments



5.20.6.1  
(10-02-2024)  
**Program Scope and Objectives**

- (1) **Purpose:** This IRM provides guidance to Field Collection employees for whipsaw assessments related to Abusive Tax Avoidance Transaction (ATAT) cases.
- (2) **Audience:** The audience for this guidance is revenue officers in SB/SE Field Collection.
- (3) **Policy Owner:** Director, Collection Policy, SB/SE.
- (4) **Program Owner:** Collection Policy, SB/SE, Global Strategic Compliance, is the program owner of this IRM.
- (5) **Primary Stakeholders:** The primary stakeholders are SB/SE Field Collection.
- (6) **Program Goals:** The goal of the Abusive Tax Avoidance Transactions (ATAT) collection program is to identify and effect tax administration on cases involving complex transactions or multiple/layered entities intended to make it difficult to trace a taxpayer's assets and sources or transfers of income.

5.20.6.1.1  
(10-02-2024)  
**Background**

- (1) Some abusive tax avoidance transactions (ATAT) encountered by revenue officers are designed to appear, and often are, quite complex and involve various transactions as well as numerous entities including trusts, partnerships, corporations, limited liability companies and offshore entities. These transactions and multiple or layered entities are often used by a taxpayer to make it difficult to identify and locate assets or income sources.
- (2) Research and investigation of ATAT cases does not entail techniques or tools unique to ATAT casework; however, some techniques are more commonly applied, such as use of the collection summons to follow income flow or to determine nominees, and nominee/alter ego/transferee relationships regarding title to assets.
- (3) Potential fraud indicators may be present in ATAT cases. Contact your local fraud enforcement advisor, when appropriate.
- (4) Research to identify the nature of the promotion or transaction used by a taxpayer is important in developing an effective case strategy for resolution of ATAT cases.
- (5) Research prior to contact is essential in ATAT cases. Guidance on conducting an initial analysis is located in IRM 5.1.10, Taxpayer Contact. Additional research may be necessary due to the complexity of an ATAT case. Because the goal of ATAT schemes is often to disguise the taxpayer's beneficial ownership of assets, developing a complete and accurate financial picture of a taxpayer participating in an abusive scheme is crucial.
- (6) Awareness of taxpayer rights remains important in ATAT case work. Taxpayer rights, as identified in Publication 1, Your Rights as a Taxpayer, are addressed in IRM 5.1.9, Collection Appeal Rights, and throughout IRM Part 5.

5.20.6.1.2  
(10-02-2024)  
**Authority**

- (1) The following authorities provide the basis for these guidelines:
  - 26 U.S. Code 6103, Confidentiality and disclosure of returns and return information, known as Internal Revenue Code (IRC) 6103
  - IRC 6304, Fair tax collection practices

## 5.20 Abusive Tax Avoidance Transactions (ATAT)

- IRC 7602(c), Examination of books and witnesses, Notice of contact of third parties
- Section 1206 of the Taxpayer First Act
- IRM 1.2.65, Servicewide Policies and Authorities, Small Business/Self Employed Division Delegations of Authority-SB/SE Functional Delegations Orders-Collection

5.20.6.1.3  
(10-02-2024)

### **Roles and Responsibilities**

- (1) The Director, Collection Policy is the executive responsible for the policies and procedures to be employed by Field Collection personnel.
- (2) Field Collection group managers and Field Compliance/Territory managers are responsible for ensuring compliance with the guidance and procedures described in this IRM.
- (3) Employees assigned ATAT cases for investigation are responsible for following these procedures.

5.20.6.1.4  
(10-02-2024)

### **Program Management and Review**

- (1) Program Reports:
  - Management utilizes management information reports from the Integrated Collection System (ICS) and ENTITY systems to monitor and track timely and appropriate case actions. ICS contains unique case sub-codes to identify ATAT cases. The ENTITY database also contains queries to assist in the identification of ATAT cases.
  - Reports from the Embedded Quality Review System (EQRS) measure program consistency, effectiveness in case actions and compliance with policy and procedures. Trends from these reports are used to recommend improvements where necessary when errors are identified. Reports from EQRS provide management information used in guiding revenue officers to take timely, effective, and appropriate case actions.
- (2) Program Effectiveness:
  - Collection Policy performs ATAT program reviews as necessary to verify compliance with IRM requirements and address Treasury Inspector General for Tax Administration (TIGTA) and Government Accountability Office (GAO) audit findings.
  - Case reviews are performed by group managers and National Quality reviewers to ensure compliance with this IRM.
  - Operational reviews are performed by the Field Compliance/Territory manager and area director annually to evaluate program delivery and conformance to administrative and compliance requirements.

5.20.6.1.5  
(10-02-2024)

### **Program Controls**

- (1) Field Collection managers perform program controls by performing case consultations, reviews, employee observations and security reviews. IRM 1.4.50, Collection Group Manager, Field Compliance/Territory manager and Area Director Operational Aid, communicates responsibility for management to implement and monitor required internal controls. The Integrated Collection System, ENTITY Case Management System and Embedded Quality System provide management with case access and data to monitor internal controls.
- (2) Management information reports from the Integrated Collection System (ICS) and ENTITY systems monitor and track timely and appropriate case actions.

ICS contains unique case sub-codes to identify ATAT cases. The ENTITY database also contains queries to assist in the identification of ATAT cases.

- (3) Reports from the Embedded Quality Review System (EQRS) measure program consistency, effectiveness in case actions and compliance with policy and procedures. Trends from these reports are used to recommend improvements where necessary when errors are identified. Reports from EQRS provide management information used in guiding revenue officers to take timely, effective, and appropriate case actions.

5.20.6.1.6  
(10-02-2024)

#### Terms and Acronyms

- (1) The following terms and acronyms are used in this chapter:

Acronym	Definition
ATAT	Abusive Tax Avoidance Transactions
CCP	Centralized Case Processing
CNC	Currently Not Collectible
EQRS	Embedded Quality Review System
GAO	Government Accountability Office
ICS	Integrated Collection System
IDRS	Integrated Data Retrieval System
IRC	Internal Revenue Code
RAR	Revenue Agent Report
TIGTA	Treasury Inspector General for Tax Administration

5.20.6.1.7  
(10-02-2024)

#### Related Resources

- (1) IRM Resources:
  - IRM 5.1.10, Taxpayer Contacts
  - IRM 5.1.12, Cases Requiring Special Handling
  - IRM 5.1.18, Locating Taxpayers and their Assets
  - IRM 5.20.3, Third Party Contacts
  - IRM 25.27.1, Third Party Contact Program
- (2) Web Resources:
  - *Abusive Tax Avoidance Transactions Knowledge Base*
  - *Knowledge Management Collection Floor*

5.20.6.2  
(02-18-2014)

#### Whipsaw Assessments

- (1) Whipsaw statutory notices of deficiency assessments are a technique used by examination when auditing an abusive trust, and the taxpayer has reduced or eliminated their tax liability using one or more layers of trust entities.
- (2) A whipsaw assessment is used when the subjects of an examination refuse to cooperate with the Internal Revenue Service and the IRS is unable to accu-

## 5.20 Abusive Tax Avoidance Transactions (ATAT)

rately determine the correct tax owed by each entity. The IRS 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.

### 5.20.6.2.1 (09-21-2005) **Background**

- (1) Prior to the 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 (the income stream) or the family trust (legal title to the property).

### 5.20.6.2.2 (09-21-2005) **Use of Whipsaw**

- (1) With the 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 using nominee, alter ego or transferee processes.
- (2) Alternatively, if the related cases are petitioned to the Tax Court, they will be consolidated for trial, and the IRS will pursue a federal court opinion stating that the multiple entity arrangement is a sham.
- (3) If it is determined that the trusts are valid, the whipsaw assessments will be reduced to the appropriate amounts.

### 5.20.6.2.3 (10-02-2024) **Identification of Key and Related Whipsaw Cases**

- (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 locations of the separate entities, coordinate between the revenue officers, group manager(s), collection ATAT coordinator(s), and ATAT Field Compliance/Territory managers as necessary.
- (2) When a revenue officer is assigned an ATAT case, especially for a trust (Form 1041) assessment, research should be done to ensure all related assessments are found. Related assessments may be pending in appeals, in the Tax Court, in the queue, in the notice process, or assigned to 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 all 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.
- (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 AMDISA 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) and administrative file when working an ATAT whipsawed case. Pertinent asset and other identifying information are provided in the RAR and related case documents. A flowchart or list of the names and TINs of all the related whipsaw entities may also be provided in the RAR.

5.20.6.2.4  
(10-02-2024)  
**Collecting Whipsaw  
Assessments**

- (1) As stated in IRM 5.20.6.2.3 above, whipsaw assessments reflect tax from the same income as 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 dissolve the sham trusts, return all assets back into the taxpayer's name, and file corrected returns properly reporting all income on their individual income tax return. If the taxpayer becomes cooperative, contact 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 Internal Revenue Service's inability to accurately determine the correct tax owed by

## 5.20 Abusive Tax Avoidance Transactions (ATAT)

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) If the entire liability is collected, prepare but do not process Form 3870, Request for Adjustment, which will be processed to abate the duplicate liabilities after the two-year claim for refund period has expired. If needed, secure the tax abatement approval from Exam. Report the remaining whipsawed 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). See IRM 5.16.1.6, Mandatory Follow Up, for complete information on processing mandatory follow-ups.
- (6) Use CNC closing code 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. Send the paper file to CCP to monitor the follow-up. The specific follow-up action should request the case file be returned to the Group Manager after the two-year claim period expires, so the case can be assigned, and a determination made on whether to abate the remaining liabilities.
- (7) After the case is returned following the two-year claim period, 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, 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 type of litigation, and whether the abatement request should be processed. If there are no TC 520s on any of the modules, the Forms 3870 should be processed, and the case closed.