



MANUAL TRANSMITTAL

Department of the Treasury
Internal Revenue Service

5.20.7

MAY 16, 2019

EFFECTIVE DATE

(05-16-2019)

PURPOSE

- (1) This transmits revised IRM 5.20.7, Abusive Tax Avoidance Transactions, Monitoring of Promoter/Preparer Injunctions (IRC 7407 and 7408.)

MATERIAL CHANGES

- (1) Title of IRM 5.20.7 updated to **Monitoring of Promoter/Preparer Injunctions (IRC 7407 and 7408.)**
- (2) IRM 5.20.7.1 updated to include internal controls under Program Scope and Objectives.
- (3) IRM 5.20.7.2(2) and IRM 5.20.7.2(3) included IRC 6694 and IRC 6695 with IRC 6700 and IRC 6701 as a penalty assessment that may be received.
- (4) IRM 5.20.7.2(4) updated IRM citation and corrected link.
- (5) IRM 5.20.7.3(3) updated to provide guidance to obtain promoter penalty case file which should include client list.
- (6) IRM 5.20.7.3(7) removed guidance to make a referral to CI. Added language to clarify that DOJ will determine whether to pursue civil or criminal contempt.
- (7) IRM 5.20.7.4(3) updated link to the Lead Development Center.
- (8) Editorial corrections made throughout IRM 5.20.7.

EFFECT ON OTHER DOCUMENTS

This material supersedes IRM 5.20.7, Monitoring of IRC 7407 & 7408 Injunctions, dated 9-3-2014.

AUDIENCE

The target audience is SB/SE Collection employees.

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Small Business/Self-Employed

5.20.7

Monitoring of Promoter/Preparer Injunctions (IRC 7407 and 7408)

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5.20.7.1
(05-16-2019)
Program Scope and Objectives

- (1) **Purpose.** This IRM provides guidance to field Collection employees on all aspects of working promoter/preparer injunction cases from referral to monitoring.
- (2) **Audience.** The audience is revenue officers in Small Business/Self-Employed (SB/SE) Field Collection.
- (3) **Policy Owner.** The Director of Collection Policy is responsible for issuing policy for the Abusive Tax Avoidance Transactions (ATAT) Collection program.
- (4) **Program Owner.** The program owner is Collection Policy, Global Strategic Compliance, an organization within SB/SE Division.
- (5) **Primary Stakeholders.** The primary stakeholders are SB/SE Collection and SB/SE Lead Development Center (LDC).
- (6) **Program Goals.** Promoter/preparer investigations are some of the highest priority cases for Collection ATAT. By following the procedures in this IRM, users will understand the process for making a contempt referral to the LDC and will know the appropriate case actions when working and monitoring enjoined promoters/preparers.

5.20.7.1.1
(05-16-2019)
Background

- (1) The IRS continues to identify new types of tax transactions or promotions that are either abusive or potentially abusive requiring different levels of coordination and varying strategies. This IRM provides assistance to revenue officers working enjoined promoters and preparers.

5.20.7.1.2
(05-16-2019)
Authority

- (1) The IRS has been delegated the responsibility to administer and enforce the Internal Revenue Code.

5.20.7.1.3
(05-16-2019)
Responsibilities

- (1) The Director of Collection Policy is the executive responsible for the policy and procedures to be employed by Collection personnel.
- (2) Field Collection Group Managers and Territory Managers are responsible for ensuring compliance with the guidance and procedures described in this IRM.
- (3) The SB/SE LDC Program Manager is responsible for authorizing all Abusive Transactions investigations for SB/SE and Tax Exempt & Government Entities (TE/GE).

5.20.7.1.4
(05-16-2019)
Program Management and Review

- (1) Program Reports:
 - a. The Collection Activity Reports (CAR) report number 5000-23 provides an overview of staff hours expended and workload data for Field Collection.
 - b. The CAR report number 5000-1 provides an overview of common Taxpayer Delinquent Account (TDA) activity such as issuances, dispositions, credits and inventory.
- (2) Reviews:
 - a. Collection Policy conducts ATAT program reviews as necessary to verify compliance with IRM requirements and to address Treasury Inspector General for Tax Administration/Government Accountability Office findings.

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- b. Case reviews are conducted by Group Managers to ensure compliance with this IRM.
- c. Operational reviews are conducted by the Territory Manager and Area Director annually to evaluate program delivery and conformance to administrative and compliance requirements.

5.20.7.1.5
(05-16-2019)

Program Controls

- (1) Group Managers, as well as Territory Managers and Area Directors, are required to approve certain revenue officer case actions. The IRM outlines when approval is required and the level of approval necessary.
- (2) The SB/SE LDC reviews and uploads each lead to the LDC Database with an assigned Control Number.

5.20.7.1.6
(05-16-2019)

Acronyms

- (1) This table lists commonly used acronyms and their definitions:

| Acronym | Definition |
|---------|------------------------------------|
| ATAT | Abusive Tax Avoidance Transactions |
| CAR | Collection Activity Reports |
| DOJ | Department of Justice |
| LB&I | Large Business & International |
| LDC | Lead Development Center |
| OTSA | Office of Tax Shelter Analysis |
| RPC | Return Preparer Coordinator |
| SB/SE | Small Business/Self-Employed |
| TBOR | Taxpayer Bill of Rights |
| TDA | Taxpayer Delinquent Account |
| TE/GE | Tax Exempt & Government Entities |

5.20.7.1.7
(05-16-2019)

Related Resources

- (1) Additional information and guidance on ATAT collection issues can be found in the following IRM sections.
 - a. See IRM 5.20.1 through 5.20.12 for additional information on ATAT collection issues.
 - b. See IRM Part 5 for additional information on general collection issues.
 - c. See IRM 4.32 for guidance to employees who are examining abusive transactions.
- (2) The IRS adopted the Taxpayer Bill of Rights (TBOR) in June 2014. Employees are responsible for being familiar with and acting in accordance with taxpayer rights. See IRC 7803(a)(3), *Execution of Duties in Accord with Taxpayer Rights*. For additional information about the TBOR, see <https://irssource.web.irs.gov/Lists/General%20News/DispItemForm.aspx?ID=126>.

5.20.7.2
(05-16-2019)
**Collection Involvement
and Monitoring of IRC
7407 and 7408
Injunctions**

- (1) IRC 7407, *Action to Enjoin Tax Return Preparers*, allows the government to seek an injunction against a preparer to prevent the preparer from engaging in certain practices. IRC 7408, *Actions to Enjoin Specified Conduct Related to Tax Shelters and Reportable Transactions*, allows the government to seek an injunction against a promoter of an abusive tax avoidance transaction to prevent the promoter from furthering a tax scheme promotion. (See IRM 20.1.6.3, *Overview - Preparer, Promoter, Material Advisor, and Failure to Disclose Reportable Transaction Penalties*.) In addition, the government may seek injunctive relief under IRC 7402, **Jurisdiction of District Courts**. These Code sections allow the IRS to bring civil action in district court against tax return preparers or promoters of an abusive tax avoidance transaction to enjoin them from further engaging in this conduct or behavior. All leads regarding a potential abusive preparer or promoter must be submitted to the SB/SE LDC before an injunction investigation under IRC 7407 and 7408 can be authorized.
- (2) Although no assessments are made for collection enforcement, revenue officers should be aware that these types of injunctions may also be referred in conjunction with an IRC 6694, **Understatement of Taxpayer's Liability by Tax Return Preparer**, IRC 6695, **Other Assessable Penalties with Respect to the Preparation of Tax Returns for Other Persons**, IRC 6700, *Promoting Abusive Tax Shelters, etc.*, promoter penalty, or an IRC 6701, *Penalties for Aiding and Abetting Understatement of Tax Liability*, preparer penalty. (See IRM 5.20.8, *Promoter/Preparer Investigations*.)
- (3) Any IRC 6694, IRC 6695, IRC 6700 or IRC 6701 penalty assessment received in collection will be treated as high priority and worked expeditiously. (See IRM 5.20.1.10, *Prioritization of ATAT Work*.)
- (4) If during the course of a revenue officer's investigation, it is discovered that the balance due or delinquent return investigation assigned may be subject to IRC 7407/7408 injunction procedures, a referral to the SB/SE LDC is warranted. See IRM 4.32.2.4.2, *SB/SE Lead Development Center (SB/SE LDC)*; or submit a referral online. Procedures for making a promoter/preparer referral can be found on the LDC website at <http://mysbse.web.irs.gov/examination/examorg/hq/ecs/ldc/default.aspx>.

5.20.7.3
(05-16-2019)
**Working an Enjoined
Promoter/Preparer Case**

- (1) Any time a revenue officer is assigned a case where the promoter/preparer has been enjoined, the revenue officer should be alert to violations of the injunction order.
- (2) In all cases, the revenue officer should secure a copy of the injunction order. The order will list specific actions the promoter/preparer is prohibited from doing. Most injunction orders and related press releases can be found at the Department of Justice (DOJ) Tax Division's website at <http://www.justice.gov/tax/injunctions.htm>, or on PACER. For injunctions not posted on DOJ's website, revenue officers can contact the Return Preparer Coordinators (RPC) who can obtain a copy of the injunction via the Return Preparer Database. Revenue officers should contact the designated coordinator in the revenue officer's Area using the following link: <http://mysbse.web.irs.gov/exam/tip/rp/contacts/12293.aspx>.
- (3) Revenue officers should conduct an Internet search to verify the promoter/preparer's website is no longer operational. For promoter/preparer injunctions,

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the revenue officer should obtain the promoter or preparer penalty case file which should contain the client list. The client list can provide collection leads as to whether or not the preparer/promoter is still doing business.

- (4) A court order enjoining a promoter/preparer from certain activities has the effect of law and monitoring this compliance is important. Violations of a court order can result in civil or criminal contempt sanctions.
- (5) A civil contempt sanction is designed to compel the promoter/preparer to comply with the injunction's terms. A criminal contempt sanction is designed to punish the promoter/preparer for a past violation of the injunction.
- (6) The court's injunction order outlines required actions and any prohibited acts by the promoter/preparer. Subject to the specific requirements of the court order, examples of potential violations include:
 - a. Failing to shut down a website or starting a new website,
 - b. Failing to inform participants of the court action,
 - c. Failing to terminate preparing tax returns,
 - d. Continuing to conduct seminars or advertisements that promote any abusive promotion,
 - e. Failing to provide a participant list to the IRS,
 - f. Continuing to advise participants of the mechanics of an abusive tax promotion,
 - g. Failing to comply with any portion of the court order,
 - h. Any conduct or activity subject to penalties under IRC 6700, Promoting Abusive Tax Shelters, etc., IRC 6701, Penalties for Aiding and Abetting Understatement of Tax Liability, IRC 6694, Understatement of Taxpayer's Liability by Tax Return Preparer, or IRC 6695, Other Assessable Penalties with Respect to the Preparation of Tax Returns for Other Persons, and IRC 6707, Failure to Furnish Information Regarding Reportable Transactions, and IRC 6708, Failure to Maintain Lists of Advisees with Respect to Reportable Transactions,
 - i. Any acts resulting in the impairment or impeding the administration of the Internal Revenue Laws.
- (7) If the promoter/preparer is found to be in violation of the injunction order, the revenue officer should prepare Form 14788 , *SB/SE LDC Contempt Referral*. If appropriate, the LDC will make the referral to DOJ. If there is sufficient evidence of contempt, DOJ will ask the court to find the promoter/preparer in civil contempt and order monetary fines, incarceration, or both. If the promoter/preparer's actions warrant a criminal contempt action, DOJ Tax Division Civil Section makes a referral to the criminal section in the Tax Division.

5.20.7.4 (05-16-2019) **Making a Contempt Referral**

- (1) The SB/SE LDC is responsible for monitoring compliance with injunction orders granted against SB/SE promoters and preparers. Office of Tax Shelter Analysis (OTSA) is responsible for monitoring compliance with injunction orders granted against Large Business and International (LB&I) promoters and preparers.
- (2) IRS employees who learn of any new or continuing unlawful activity by an enjoined promoter/preparer must make a referral to the SB/SE LDC.

- (3) The investigating revenue officer should complete Form 14788, *SB/SE LDC Contempt Referral*, and email to *LDC. The referral form can be found on the LDC website at <http://mysbse.web.irs.gov/examination/tip/contempt/default.aspx>. The SB/SE LDC is responsible for following up on contempt referrals and ensuring they are pursued in appropriate cases. If the contempt referral is on an LB&I promoter/preparer, the LDC will forward the referral to OTSA if appropriate.

