



MANUAL TRANSMITTAL

Department of the Treasury
Internal Revenue Service

5.20.10

OCTOBER 5, 2018

EFFECTIVE DATE

(10-05-2018)

PURPOSE

- (1) This transmits revised IRM 5.20.10, *Abusive Tax Avoidance Transactions, Identification and Processing of Frivolous Documents*.

MATERIAL CHANGES

- (1) IRM 5.20.10.1 updated to include internal controls under Program Scope and Objectives.
- (2) IRM 5.20.10.2(1) provided additional information on the “Truth About Frivolous Arguments” and updated the link on the Internal Revenue Service web site.
- (3) IRM 5.20.10.2(4) updated IRM citation.
- (4) IRM 5.20.10.3(4) updated IRM citation.
- (5) IRM 5.20.10.4.3(3) updated to remove Publication 2105 as it is no longer an enclosure with Letter 3176.
- (6) IRM 5.20.10.4.3(3)(a) updated to change time period from 30 to 60 days for taxpayer to respond to Letter 3176.
- (7) IRM 5.20.10.4.3(4) updated organizational titles and updated link.
- (8) IRM 5.20.10.5 added to provide guidance on IRC 6702 penalty abatement.
- (9) IRM 5.20.10.6 added to provide guidance on IRC 6702 penalty reduction.
- (10) IRM 5.20.10.7(4) updated IRM citation.
- (11) Editorial corrections made throughout IRM 5.20.10.

EFFECT ON OTHER DOCUMENTS

This material supersedes IRM 5.20.10, dated May 20, 2014.

AUDIENCE

The target audience is SB/SE Collection employees.

Kristen E. Bailey
Director, Collection Policy
Small Business/Self-Employed

5.20.10

Identification and Processing of Frivolous Documents

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5.20.10.1
(10-05-2018)
Program Scope and Objectives

- (1) **Purpose.** This IRM provides guidance to Field Collection employees on the appropriate processing of frivolous returns and other specified frivolous submissions subject to penalty under IRC 6702 as well as frivolous correspondence not subject to IRC 6702.
- (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 Transaction (ATAT) 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 Return Integrity & Compliance Services (RICS) in the Wage & Investment (W&I) Division.
- (6) **Program Goals.** IRC 6702 is intended as a deterrent to address those situations where a taxpayer continues to assert a frivolous argument or who demonstrates intent to delay or impede the administration of the tax law. This IRM provides guidance to revenue officers on their role in administering IRC 6702.

5.20.10.1.1
(10-05-2018)
Background

- (1) The filing of frivolous returns and submissions is an ATAT characteristic of the actions by some taxpayers. Frivolous arguments have been challenged in court and the Service has been successful in defending these cases. The IRS, through the use of IRC 6702, addresses non-compliance based on unfounded legal or constitutional arguments. The Service does, however, have a responsibility to respond to taxpayer's questions.
- (2) Potential fraud indicators may be present in frivolous submissions (see IRM 25.1.2.3, *Indicators of Fraud*.) Initiate discussion with your manager, if appropriate.

5.20.10.1.2
(10-05-2018)
Authority

- (1) Congress has delegated to the IRS the responsibility of administering the tax laws, known as the Internal Revenue Code, found in Title 26 of the United States Code. Congress enacts these tax laws, and the IRS enforces them.
- (2) IRC 6702 addresses and contains separate and distinct requirements for two Frivolous Tax Submissions categories.
 - Frivolous Tax Returns under IRC 6702(a)
 - Specified Frivolous Submissions under IRC 6702(b)

5.20.10.1.3
(10-05-2018)
Responsibilities

- (1) The Director, 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.

5.20 Abusive Tax Avoidance Transactions (ATAT)

5.20.10.1.4
(10-05-2018)

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/General Accounting Office findings.
 - 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.

5.20.10.1.5
(10-05-2018)

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.

5.20.10.1.6
(10-05-2018)

Acronyms

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

Acronym	Definition
ATAT	Abusive Tax Avoidance Transaction
CAP	Collection Appeal Program
CAR	Collection Activity Reports
CDP	Collection Due Process
FOIA	Freedom of Information Act
FRP	Frivolous Return Program
OIC	Offer in Compromise
RICS	Return Integrity & Compliance Services
SB/SE	Small Business/Self-Employed
TBOR	Taxpayer Bill of Rights
TDA	Taxpayer Delinquent Account
W&I	Wage & Investment

5.20.10.1.7
(10-05-2018)

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 25.25.10 for information on the Frivolous Return Program (FRP.)

- (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>.

5.20.10.2
(10-05-2018)
**Frivolous Submissions
Subject to IRC § 6702**

- (1) Notice 2010-33, *Frivolous Positions*, as prepared by the Office of Chief Counsel, lists arguments identified as frivolous for purposes of the IRC 6702 penalty. This listing may be updated if new frivolous positions are identified. It can be accessed on the Internal Revenue Service website at http://www.irs.gov/irb/2010-17_IRB/ar13.html. The Office of Chief Counsel annually updates **The Truth About Frivolous Arguments**, which contains additional information about court opinions addressing common frivolous arguments. Access this document on the Internal Revenue Service website at <https://www.irs.gov/tax-professionals/the-truth-about-frivolous-tax-arguments-introduction>.
- (2) Section 407 of the Tax Relief and Health Care Act of 2006 increased the amount of the IRC 6702 penalty from \$500 to \$5,000 and broadened it to impose the IRC 6702 penalty against taxpayers who file all types of purported returns of tax and certain “specified frivolous submissions.”
- (3) These specified frivolous submissions include **frivolous requests** for:
 - Collection Due Process (CDP) hearings,
 - installment agreements,
 - offers in compromise (OIC),
 - and taxpayer assistance orders (generally such written requests are made on Form 911.)
- (4) The penalty is intended to address those situations in which a taxpayer asserts a frivolous argument or who demonstrates intent to delay or impede the administration of the tax law. See IRM 25.25.10, *Frivolous Return Program*.

5.20.10.3
(10-05-2018)
**IRC 6702 Penalty
Assessments**

- (1) The IRC 6702 penalty may be assessed against a taxpayer who submits either a frivolous tax return (IRC 6702(a)) or a specified frivolous submission (IRC 6702(b)). A frivolous submission not meeting the definitions described below will not be subject to IRC 6702 penalty assessment.
- (2) IRC 6702(a) provides that a person who files a **purported tax return**, including an original or amended return, is subject to a penalty of \$5,000 if it meets two tests. First the return either (i) does not contain information on which the substantial correctness of the return can be judged or (ii) contains information that on its face indicates that the self-assessment is substantially incorrect. Second, the return is either (i) based on a position listed in Notice 2010–33 (or subsequent guidance) or (ii) reflects a desire to delay or impede the administration of Federal tax laws.

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Note: When the taxpayer timely files a correct and complete return, the section 6702 penalty should not be assessed based solely on the fact that the taxpayer enclosed a letter with the return explaining why the taxpayer is not paying the self-assessed tax due. If a penalty has been assessed, it should be abated.

- (3) IRC 6702(b) provides that a person who submits a **specified frivolous submission** based on one or more of the frivolous arguments listed in Notice 2010-33 (or subsequent guidance) or that reflects a desire to impede the administration of Federal tax laws is subject to a penalty of \$5,000. Specified submissions include:
 - a. Request for a CDP hearing,
 - b. An application for an installment agreement,
 - c. An OIC, or
 - d. A taxpayer assistance order.
- (4) See IRM 5.8.10.13, *Offer in Compromise Submission with Frivolous, Delaying, or Impeding Issues*, for guidance on penalty assertion under section 6702 related to an offer in compromise.
- (5) Close coordination with Counsel is needed when recommending a penalty under section 6702 that reflects a desire to impede the administration of Federal tax laws rather than being based on one or more of the frivolous arguments listed in Notice 2010-33 (or subsequent guidance.)
- (6) IRC 6702 penalties are assessed by the FRP at the Ogden Service Center.

5.20.10.4
(05-20-2014)

Responding to Frivolous Submissions

- (1) The following section provides guidance on how to respond to frivolous submissions.

5.20.10.4.1
(10-05-2018)

Reviewing Frivolous Submissions

- (1) Review all frivolous submissions to see if the document contains a valid request such as but not limited to:
 - a. Freedom of Information Act requests (FOIA),
 - b. Request for a transcript of record of account,
 - c. Taxpayer Advocate Service issues,
 - d. CDP requests,
 - e. Collection Appeal Program (CAP) requests, and
 - f. Installment agreement requests.
- (2) If the filing includes a valid request that requires a response, such as a request for a record of account, it should be forwarded to the appropriate function (i.e. Disclosure, Taxpayer Advocate Service, or Appeals.)

5.20.10.4.2
(10-05-2018)

Frivolous Return Program Unit

- (1) After reviewing and responding to the taxpayer(s) non-frivolous request(s), mail frivolous package via Form 3210, *Document Transmittal*, to the Ogden Service-Center FRP unit at:

Internal Revenue Service

Attn: FRP M/S 4450

1973 N. Rulon White Blvd.

Ogden, Utah 84404

- (2) See IRM 25.25.10.3, *Referrals to Frivolous Return Program*, for additional information.

5.20.10.4.3
(10-05-2018)

Responding to Frivolous Filings Subject to Penalty Under IRC 6702(a)

- (1) If it is determined that a taxpayer has submitted either an original or an amended tax return subject to an IRC 6702(a) penalty, stamp the return with the date received. Do not send the return through the Submission Processing Center. Send the complete original return with all attachments, including the envelope, to the FRP and maintain a copy of the return in the case file.

Note: These procedures apply to both IMF and BMF tax returns.

- (2) In very limited situations, it may be necessary for the revenue officer to maintain control of the original return. In this situation, the revenue officer will maintain control of the original return and will mail a complete copy of the return with all attachments, including the envelope, to the FRP.

Example: If Counsel or Criminal Investigation requests the original return due to pending court action, the revenue officer will maintain the original return and will mail FRP a copy of the return.

- (3) FRP will mail Letter 3176C to the taxpayer informing them of the frivolous argument and requesting they withdraw their position and submit any non-filed returns. FRP will monitor for the response from the taxpayer.
- a. If, within 60 days of the notice, the taxpayer files a valid return withdrawing the frivolous argument, or withdraws the frivolous argument without filing a valid return, FRP will not assess the IRC 6702 penalty.
 - b. If the taxpayer fails to respond or responds with additional frivolous submissions or correspondence, FRP will assess the IRC 6702 penalty.

Note: Issuance of the Letter 3176 is limited to FRP. Revenue officers will not issue Letter 3176.

- (4) The revenue officer will monitor IDRS for assessment of the IRC 6702 penalty. If there is no assessment after ten weeks, the revenue officer may contact the RICS Campus Operations FRP Coordinator to determine the status. The Coordinator can be located by clicking on the FRP Headquarters Contacts on the Frivolous Return Program website at <http://win.web.irs.gov/RICS/IVO/FRP.htm>.

5.20 Abusive Tax Avoidance Transactions (ATAT)

5.20.10.4.4 (10-05-2018) IRC 6702(b) Specified Frivolous Submissions with Request for Hearing Under IRC 6320 or IRC 6330

- (1) Revenue officers will review CDP hearing requests and determine if they contain any frivolous arguments as outlined in Notice 2010-33 (or subsequent guidance.) The revenue officer should forward the hearing request to Appeals. See IRM 5.1.9, *Collection Appeal Rights*, and specifically IRM 5.1.9.3.16, *Hearing Requests with Frivolous, Delaying or Impeding Issues*, for additional information when a frivolous submission(s) meeting the requirements of IRC 6702(b) is received.

5.20.10.5 (10-05-2018) IRC 6702 Penalty Abatement

- (1) Requests for abatement will be granted **ONLY** in cases involving Service error. See IRM 20.1.10.12.1.3, *Penalty Relief*, for additional information on relief of an IRC 6702(a) penalty and IRM 20.1.10.12.2.3, *Penalty Relief*, for additional information on relief of an IRC 6702(b) penalty. For additional information on handling requests for abatement, see IRM 25.25.10.8.4, *Post Penalty Assessment Processing*.

5.20.10.6 (10-05-2018) IRC 6702 Penalty Reduction

- (1) IRC 6702(d) authorizes the reduction of the frivolous tax submission penalties assessed under IRC 6702 if it is determined that a reduction would promote compliance with and administration of the federal tax laws. A person must make a written request for reduction on Form 14402, *IRC 6702(d) Frivolous Return Submissions Penalty Reduction*, (or successor form) or as prescribed by the Form's instructions. The person must also sign the form or written statement under penalties of perjury, and file it with the IRS in accordance with instructions to the form or other guidance. A person may file a single Form 14402 or written statement to request reduction of more than one section 6702 penalty. See IRM 20.1.10.12.3, *IRC 6702(d) Reduction of Frivolous Submission IRC 6702 Penalties*, and IRM 25.25.10.10, *Reduction of the Frivolous Return Penalty IRC 6702(d)*. Additional information can also be found in Rev. Proc. 2012-43.

5.20.10.7 (10-05-2018) Responding to Frivolous Correspondence Not Subject to IRC 6702

- (1) For purposes of this IRM, the term "correspondence" refers only to frivolous correspondence not attached to a return or document purporting to be a return; or to a request for a CDP hearing, installment agreement, OIC, or taxpayer assistance order, or documents purporting to be any of the above.
- (2) When the Service receives frivolous correspondence not subject to IRC 6702 (e.g., correspondence indicating an unwillingness to file returns or pay taxes based on frivolous arguments), Letter 3175, *Frivolous Correspondence Response*, is sent to inform the taxpayer(s) that the position is frivolous and that further correspondence regarding frivolous issues will not receive responses.

Note: Letter 3175 constitutes an outreach education and therefore subsequent frivolous filings will not require an additional Letter 3175.

Note: Review CC ENMOD to determine if the taxpayer has been issued Letter 3175. Do not issue another Letter 3175 if the taxpayer was previously issued the letter.

- (3) Revenue officers will review all taxpayer correspondence to determine appropriate handling, including referrals to the SB/SE Lead Development Center. Consideration should be given to legitimate issues needing a response. If the

document contains valid inquiries, such as FOIA requests or requests that meet Taxpayer Advocate Service criteria, the document should be forwarded to the appropriate function.

- (4) Once legitimate issues have been appropriately addressed, the revenue officer will determine if the frivolous position(s) asserted by the filer are contained in either Notice 2010-33 (or subsequent guidance), IRM 25.25.10-1, *Frivolous Arguments*, or **The Truth About Frivolous Arguments**, which can be found on the Internal Revenue Service website at: <http://www.irs.gov/Tax-Professionals/The-Truth-About-Frivolous-Tax-Arguments-Introduction>.

If	Then	Follow Up Actions
Argument is included in either Notice 2010-33 (or subsequent guidance), IRM 25.25.10-1, or <i>The Truth About Frivolous Arguments</i>	Assigned revenue officer will issue a Letter 3175, then document action on ICS case history, and update IDRS via CC ACTON with history entry indicating Letter 3175 has been sent. Note: Do not issue another Letter 3175 if the taxpayer was previously issued the letter.	Mail a copy of the Letter 3175 and page one and two of the correspondence to the FRP. Copies must contain the name, address and SSN of the filer. They must include a stamp indicating the date the correspondence was received, a clear notation that the Letter 3175 was sent and the date the Letter 3175 was sent. Send the copies to the FRP via Transmittal Form 3210 at the following address: Internal Revenue Service Attn: FRP M/S 4450 1973 N. Rulon White Blvd. Ogden, UT 84404

5.20 Abusive Tax Avoidance Transactions (ATAT)

If	Then	Follow Up Actions
New frivolous argument is identified	When a potentially new frivolous argument is identified, an opinion from the Office of Chief Counsel deeming it frivolous must be obtained prior to the issuance of Letter 3175. Requests for Counsel opinion will be secured through the FRP.	<p>A revenue officer request for Counsel opinion will include:</p> <ul style="list-style-type: none"> • a description of the argument • a copy of the alleged frivolous correspondence in its entirety • a clear request for Counsel opinion notated on Form 3210 <p>Send the request to the attention of the Sr. Technical Advisor for the FRP via Transmittal Form 3210 (address listed above.)</p>

- (5) If the revenue officer issues the Letter 3175, the revenue officer will take the following steps to update IDRS via CC ACTON with a history entry.
- Bring up CC ENMOD, then overlay ENMOD with ACTON.
 - Hit the backspace to clear line.
 - Input the following history:
ACTON
H,3175SENT
 - Go back to ENMOD and overlay with ACTON. Follow the same steps to input the date that Letter 3175 was sent.
ACTON
H,MMDDYYYY
 - There are ten characters available to input a history after the "H."

Note: If the revenue officer issues Letter 3175, the revenue officer must update IDRS via CC ACTON. If FRP issues the Letter 3175, a correspondex letter is sent and IDRS is systemically updated.

- (6) Frivolous documents not related to an open collection case should be routed to the FRP via Form 3210.

Internal Revenue Service

Attn: FRP M/S 4450

1973 N. Rulon White Blvd.

Ogden, UT 84404