



MANUAL TRANSMITTAL

Department of the Treasury
Internal Revenue Service

5.21.3

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EFFECTIVE DATE

(01-07-2016)

PURPOSE

- (1) This transmits a revision of IRM 5.21.3, *Collection Tools for International Cases*, for collection employees.

MATERIAL CHANGES

- (1) IRM 5.21.3.1(1) updated to add Mutual Collection Assistance Request to the list of collection tools.
- (2) IRM 5.21.3.1(3) added to provide references for U.S. territory collection issues.
- (3) IRM 5.21.3.2(4) updated to include additional resources for locating a foreign bank account.
- (4) IRM 5.21.3.2(5) and (6) updated to include additional guidance on required approvals on levy of a domestic branch of financial institution.
- (5) IRM 5.21.3.3 updated with additional clarification and guidance on Writ Ne Exeat Republica.
- (6) IRM 5.21.3.5 updated with additional clarification and guidance on the Appointment of a Receiver.
- (7) IRM 5.21.3.6 updated with additional clarification and guidance on a Repatriation Order. Updated to include assets acquired in a foreign country.
- (8) IRM 5.21.3.7 added to include guidance on Mutual Collection Assistance Requests.
- (9) This IRM is revised to make minor grammatical corrections, update organization terms and/or titles, and correct cross references

EFFECT ON OTHER DOCUMENTS

This revision supersedes IRM 5.21.3, dated 12/4/2013.

AUDIENCE

The target audience is revenue officers in SB/SE Field Collection (FC).

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5.21.3

Collection Tools for International Cases

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5.21.3.1
(01-07-2016)
Introduction

- (1) There are several administrative and judicial collection tools available to reach offshore assets in international cases. Some of these tools can also be utilized in domestic cases. The collection tools that will be discussed in this section are as follows:
 - Levy on a domestic branch of a financial institution (for funds held offshore)
 - Writ Ne Exeat Republica
 - Customs Order or Prevent Departure Order
 - Appointment of a Receiver
 - Suit to Repatriate Property - Repatriation Orders
 - Mutual Collection Assistance Request (MCAR)
- (2) Consult Area Counsel before using these collection tools.
- (3) U.S. Territory Collection Issues: IRC 7651 authorizes the IRS to use all its administration and collection powers (e.g., summons, lien, levy, etc.) in a U.S. territory as if the territory were one of the 50 states or the District of Columbia. See IRM 25.5.3.2.3, *Summonses Issued in US Territories*, for issues relating to U.S. territory summonses; and IRM 5.11.1.4.4, *Property Outside the United States*, and IRM 5.10.1.11, *Seizure and Sale Procedures in U.S. Territories*, for issues relating to U.S. territory levies.

5.21.3.2
(01-07-2016)
**Levy on a Domestic
Branch of a Financial
Institution**

- (1) There are instances where funds held offshore can be reached by a levy if the bank has a branch in the U.S. or in a territory of the U.S.
- (2) Treasury Regulations Section 26 C.F.R. 301.6332-1(a)(2) outlines the procedures for levy when a bank is in business in the U.S. with deposits held in a branch outside the United States.
- (3) The regulations provide **two** different sets of procedures with regard to a levy on bank deposits held in offices outside the United States depending on whether or not the taxpayer is or is not within the jurisdiction of the U.S. court at the time the levy is made.
 1. If the taxpayer **is** within the jurisdiction of a U.S. court at the time the levy is made, then:
 - The notice of levy **must** specify that the Area Director intends to reach such deposits, and
 - That the bank is in possession of (or obligated with respect to) such deposits in an office outside the United States or a territory of the United States.
 2. If the taxpayer is **not** within the jurisdiction of the U.S. court at the time the levy is made, then:
 - The notice of levy **must** specify that the Area Director intends to reach such deposits,
 - That the bank is in possession of (or obligated with respect to) such deposits in an office outside the United States or a territory of the United States, and
 - That such deposits consist, in whole or in part, of funds transferred from the United States or a territory of the United States in order to hinder or delay collection of the tax imposed by the Code.

- (4) The following is an example of one type of situation in which a levy should be made on a domestic branch of a financial institution to reach funds held offshore.

Example: The taxpayer claimed false withholding credits on his Form 1040 and received a substantial refund based on the false information. The taxpayer transferred a substantial portion of the refund from his U.S. bank account to an offshore account. The taxpayer moved to a foreign country and started a business. Although the taxpayer owns valuable assets in the foreign country, the revenue officer has been unable to locate any substantial assets in the U.S. The taxpayer has made no effort to pay the outstanding debt that he admits to owing and has made affirmative efforts to put his assets beyond the reach of the Service.

- (5) Research available sources to locate the foreign bank account. Check IDRS command code IRPTR which may indicate:
- Foreign investments if federal taxes are withheld,
 - Transfer of funds in the taxpayer's domestic bank,
 - The type of income/form received by the taxpayer's domestic bank in the Financial Crimes Enforcement Network Query System (FCQ).

Check IDRS command code RTVUE to determine if the taxpayer has filed Form 8938. The "CC CD" indicator (or Computer Condition Code) will include an "H" to indicate that Form 8938 was filed. If Form 8938 has been filed, ESTAB the return to view the return information. This may lead to identification of a foreign account or asset.

Note: Document thoroughly in the case history how the foreign bank account was located and verified even though an actual account number cannot be obtained.

Note: If the foreign bank account is located in a MCAR country, prepare an outgoing MCAR request asking the treaty partner to serve a levy under their domestic authority to collect from the bank located in their country. See IRM 5.21.7.4.8, *Procedures for Requesting an Outbound MCAR*, for guidance.

- (6) Prepare the notice of levy and write this statement on the front of the notice: **The Area Director intends to attach funds held outside the U.S. or U.S. Territory.** Prepare a memorandum to Area Counsel and include as much specific information as possible regarding
- Account numbers,
 - Information linking the accounts to the foreign account,
 - Financial statements/records,
 - Third-party testimony, and
 - Testimony from the taxpayer.

Send the notice of levy and memorandum through the Revenue Officer Group Manager to Advisory for forwarding to Area Counsel for approval. Area Director review and/or approval is not required. Area Counsel will coordinate as necessary with the Office of Associate Chief Counsel (International).

- (7) Area Counsel will return the package to Advisory who will forward it to the revenue officer. If the notice of levy is approved by Area Counsel, the revenue officer will sign the notice of levy as the delegate of the Area Director. There may be circumstances where the revenue officer must perfect the approved

notice of levy prior to signing. For example, the revenue officer may need to follow Area Counsel direction as to specific language required on the notice of levy or the revenue officer may need to update the penalties and interest on the notice of levy.

- (8) Serve the notice of levy in person at the domestic branch, if possible, or send the levy via certified mail.

5.21.3.3

(01-07-2016)

Writ Ne Exeat Republica

- (1) Writ Ne Exeat Republica is an action authorized by IRC §7402(a). Writ Ne Exeat Republica is the appropriate suit action when the taxpayer:

- Is about to leave the U.S. and is unlikely to return to the U.S., or
- Has left the United States but is likely to return and may be subject to detention by the writ, and
- Has conveyed or concealed cash or other property so that it may be taken out of the U.S.

A Writ Ne Exeat Republica is an action against a person, not property. It is a temporary remedy, and not intended to operate as a perpetual restriction upon a taxpayer's freedom of movement.

- (2) Writ Ne Exeat Republica is usually filed in conjunction with some other civil action against the taxpayer such as a Suit to Foreclose the Federal Tax Lien, a Repatriation Order, or a Summons Enforcement. The purpose of a Writ Ne Exeat is to preserve the court's power to provide a means of protecting the government's ability to collect the tax by another means. The revenue officer will have to show that the other civil action they propose will not be enforceable unless the defendant is prevented from removing himself or his assets from the country.
- (3) Consider these factors when determining whether or not to file a Writ Ne Exeat Republica:
- a. Taxpayer has a large valid tax liability,
 - b. Taxpayer has transferred, or is in the process of transferring, substantially all of his assets to a location outside the United States,
 - c. Distainable domestic property and other property reachable without the writ are insufficient to satisfy the tax liability,
 - d. Other proposed civil action will not be enforceable unless the taxpayer is prevented from removing themselves or their assets from the United States,
 - e. Taxpayer established residency outside the United States or intends to do so,
 - f. Taxpayer's assets cannot be reached absent the issuance of the writ.
- (4) Before recommending a suit seeking a Writ Ne Exeat Republica:
- a. Exhaust meaningful enforcement against domestic property.
 - b. Document the taxpayer's location.
 - c. Document taxpayer attempts to conceal or gather property in anticipation of transfer.
 - d. Document time and location of likely return if the taxpayer is out of the country.
- (5) If the taxpayer is not in the United States, secure evidence they are likely to return at a specific time and place. This is needed to establish jurisdiction. It is

also important to demonstrate the taxpayer is expected to remain in the U.S. for a short period of time. If the taxpayer is returning to the U.S. permanently, a Writ Ne Exeat Republica is not appropriate. Sources for this evidence include:

- A response to a Treasury Enforcement Communications System (TECS) request to be notified if the taxpayer submits any documents relating to returning to the United States
 - Court records of pending required appearances in ongoing cases
 - Third parties
- (6) Develop a request for a Writ Ne Exeat Republica, as applicable. Pay careful attention to the personal circumstances of the taxpayer, such as age, health, family status, and employment. Specific facts that must be covered are as follows:
- a. Passport status
 - b. Past travel history
 - c. Personal and family associations and circumstances
 - d. Business activity and associations
- (7) The steps to initiate a suit requesting a Writ Ne Exeat Republica are as follows:

Step	Action
1	Gather the evidence necessary to demonstrate the required elements.
2	Consult Advisory and local Area Counsel as needed to resolve questions and ensure the action is feasible. Area Counsel coordinates as needed with the Office of Associate Chief Counsel (International).
3	Prepare a recommendation for civil suit to seek a Writ Ne Exeat Republica. Make sure the narrative and exhibits clearly demonstrate the required elements.
4	Forward the recommendation package through Advisory to Area Counsel.
5	Maintain communication with Advisory, Area Counsel and Department of Justice regarding case status and the need to testify in the writ action.

Additional information can be found in *Training Publication 29957-101 in Section E-105* with *sample narrative* at E-110.

- (8) A Writ Ne Exeat Republica and the corresponding order may be
- Issued before judgment, if necessary, due to time constraints,
 - Provided for in a final decree, or
 - Issued after judgment is established.

It will specify the function, generally the United States Marshal, responsible for serving the order and taking the taxpayer into custody.

- (9) Writ provisions generally include the taxpayer is

- To be detained and taken into custody unless they post adequate security for the outstanding tax liability.
- To remain in custody pending a final evidentiary hearing on the writ.
- Required to provide testimony and documentation as to the value and extent of all assets.
- Prohibited from transferring or encumbering assets.

(10) After a Writ Ne Exeat Republica is issued:

- Appropriate notice is given to law enforcement officials, generally through TECS. See IRM 5.1.18.14, *Treasury Enforcement Communications System*, for instructions on placing a taxpayer on TECS.
- The taxpayer is detained and served with the writ. If they have moved abroad, this occurs when they reenter the country.
- The taxpayer is taken into custody, unless they can post adequate security for the outstanding tax liability.
- The taxpayer remains in the custody of the United States Marshal until the matters addressed in the order are resolved.

5.21.3.4
(01-07-2016)
**Customs Order or
Prevent Departure Order**

- (1) A Customs Order or Prevent Departure Order is an administrative action similar to the Writ Ne Exeat Republica. A Customs Order can prevent a non-U.S. Citizen from exiting the United States, pending the resolution of a collection matter.
- (2) The authority for a Customs Order is found in 22 C.F.R. §46.2(a) which states in part "...No alien shall depart, or attempt to depart, from the United States if his departure would be prejudicial to the interest of the United States under the provisions of 46.3." In addition, C.F.R. §46.3(h) applies to a collection investigation where it states, in part, "Any alien who is needed in the United States in connection with any investigation or proceeding being, or soon to be, conducted by any official executive, legislative, or judicial agency in the United States or by any governmental committee, board, bureau, commission, or body in the United States, whether national, state, or local."
- (3) Coordinate with Area Counsel before requesting a Customs Order or Prevent Departure Order. Area Counsel will coordinate as necessary with the Office of Associate Chief Counsel (International).
- (4) Request the TECS coordinator to input a Customs Order into TECS.

Note: Close coordination must be maintained between the TECS coordinator and the revenue officer as the TECS coordinator may need to provide instructions to the Department of Homeland Security if the taxpayer is prevented from leaving the country.

Note: See IRM 5.1.18.14, *Treasury Enforcement Communications System*, for instructions on placing a taxpayer on TECS.

- (5) If the alien is found attempting to exit the U.S., they will be detained and the revenue officer will be notified and requested to provide instructions to the Customs officer.

5.21.3.5
(01-07-2016)
Appointment of a Receiver

- (1) The Appointment of a Receiver is a civil action brought in the U.S. District Court under the authority of IRC §7402(a).
- (2) A receivership places a responsible individual, known as the receiver, who works under the direction of the court in control of the taxpayer's assets. The receiver controls and conserves the assets or liquidates the assets in an orderly and efficient manner.
- (3) Appointment of a Receiver is usually in conjunction with a repatriation order and/or a Writ Ne Exeat Republica. For domestic assets, a Suit to Foreclose the Federal Tax Lien may accompany the Appointment of a Receiver.
- (4) When considering Appointment of a Receiver, the following conditions must exist:
 - a. Assets in the U.S. are not sufficient to satisfy the liability, and
 - b. Evidence shows substantial assets exist outside the U.S.

Consider requesting the Appointment of a Receiver when the taxpayer's assets might depreciate without outside intervention or the taxpayer is in a position to dispose of the assets fraudulently to the detriment of creditors, including the Government.

- (5) The receiver is not an agent or representative of the Government. They act under the control and authority of the court and may make decisions which are not favorable to the Government.
- (6) A receiver's duties include:
 - Conserving the property subject to the Federal tax lien
 - Maintaining the business as an ongoing concern
 - Returning the property to its owners when all parties have been satisfied
 - Liquidating the business to pay creditors
 - Filing all tax returns which come due during the control of the business
- (7) Develop a request for an Appointment of a Receiver, as applicable. Additional information can be found in *Training Publication 29957-101 in Section E-93* with *sample narrative at E-97*.
- (8) Consult Area Counsel prior to considering a request for an Appointment of a Receiver. Area Counsel will coordinate as necessary with the Office of Associate Chief Counsel (International).

5.21.3.6
(01-07-2016)
Suit to Repatriate Property - Repatriation Orders

- (1) A Repatriation Order is an order issued by a federal judge, after a hearing, requiring a taxpayer who has either transferred assets from the U.S. to a foreign country or acquired assets in a foreign country to transfer them back into the United States.
- (2) A Repatriation Order must show:
 - a. An outstanding tax liability,
 - b. A reasonable basis that the taxpayer has assets outside the U.S.,
 - c. Levy on domestic assets is not sufficient to satisfy the tax liability, and
 - d. The U.S. is able to get personal jurisdiction over the taxpayer. The revenue officer must show that the taxpayer is either in the U.S. or a U.S. Territory or the likelihood that the taxpayer will be returning to, or passing through, the United States.

- (3) Before recommending a suit seeking a Repatriation Order:
- Exhaust meaningful enforcement against domestic property.
 - Determine the nature, value and location of the foreign property.
 - Consider making an Exchange of Information (EOI) request to a foreign country pursuant to a U.S. tax treaty or tax information exchange agreement (TIEA), to confirm the existence and value of property located in that country. See IRM 5.21.2.2, *Exchange of Information*, for additional information. Under no circumstances should contact be made with a foreign tax authority without going through the office of the U.S. Competent Authority. The IRS can also obtain information from a U.S. territory tax department under exchange of information provisions contained in a U.S. territory tax coordination agreement. See IRM 5.21.2.2.3, *Exchange of Information - U.S. Territories*, for additional information.
 - Document this information in the case file.
 - Serve a levy on the domestic bank branch if the property is held in a foreign banking institution with a United States branch. Enforce the levy as needed.
 - Check to see if the United States has entered an income tax treaty with a foreign country that contains comprehensive mutual collection provisions (a Mutual Collection Assistance Request or MCAR). If the U.S. has an MCAR arrangement with the applicable country, make an MCAR request rather than seeking a repatriation order. See IRM 5.21.7.4, *Mutual Collection Assistance Requests (MCAR)*, for additional information on the MCAR program. Under no circumstances should contact be made with a foreign tax authority without going through the office of the U.S. Competent Authority.
- (4) The steps to initiate a Suit to Repatriate Property are as follows:

Step	Action
1	Gather the evidence necessary to demonstrate the required elements.
2	Initiate an EOI request through the office of the U.S. Competent Authority, if necessary.
3	Consult Advisory and Area Counsel as needed to resolve questions and ensure the action is feasible.
4	Prepare a recommendation for civil suit to seek repatriation of property. Make sure the narrative and exhibits clearly demonstrate the required elements.
5	Forward the recommendation package through Advisory to Area Counsel. The suit must be approved by either an Advisory or a Collection territory manager.
6	Maintain communication with Advisory, Area Counsel and Department of Justice regarding case status and the need to testify in the repatriation action.

Additional information can be found in *Training Publication 29957-101 in Section E-102* with *sample narrative at E-110*.

- (5) If the suit is successful, the court will order the taxpayer to return the property to the United States.

If the taxpayer:	Then:
returns the property to the United States,	the property is <ul style="list-style-type: none"> generally deposited with the court according to the order and disbursed appropriately, or handled otherwise if so specified.
does not return the property,	<ul style="list-style-type: none"> contact Area Counsel or Department of Justice, and request initiation of contempt proceedings.
is found in contempt and still refuses to repatriate the property,	<ul style="list-style-type: none"> the judge can order the defendant arrested and jailed until the property is returned.

- (6) Consider a Repatriation Order in concert with all other possible actions that fit the facts of the case such as Appointment of a Receivership, a Suit to Reduce the Tax to a Judgement, and a Writ Ne Exeat Republica.

5.21.3.7
(01-07-2016)

**Mutual Collection
Assistance Requests
(MCAR)**

- (1) The IRS can request assistance from some of our treaty partners to collect taxes owed by individuals residing and/or having assets in the treaty country. This request is an outgoing MCAR. There are five mutual collection income tax treaty partners:
- Canada
 - Denmark
 - France
 - The Netherlands
 - Sweden

Note: On January 24, 2013, the United States and Japan signed a new Protocol to the tax treaty which contains a provision to permit the United States and Japan to collect taxes on behalf of each other. However, collection assistance will not occur until this new Protocol is ratified by both the United States and Japan. Once the new Protocol to the income tax treaty between the United States and Japan has been ratified, this section will be updated.

- (2) These treaties provide that each country, upon request by the United States, may take whatever actions it would take to collect its own taxes in order to collect on behalf of a treaty partner. This includes the collection of U.S. taxes through the treaty partner's bankruptcy proceedings. See IRM 5.21.7.4.7, *Outbound Mutual Collection Agreement Request*, for guidance on issuing an outgoing MCAR request.