



MANUAL TRANSMITTAL

Department of the Treasury
Internal Revenue Service

8.7.18

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EFFECTIVE DATE

(08-29-2016)

PURPOSE

- (1) This transmits revised IRM 8.7.18, *Return Preparer Misconduct Cases*.

MATERIAL CHANGES

- (1) Editorial change made to incorporate Appeals Interim Guidance Memorandum AP-08-0616-0003, *Requesting Examination Assistance on Docketed Cases*.

EFFECT ON OTHER DOCUMENTS

Incorporates Appeals Interim Guidance Memorandum AP-08-0616-0003, *Requesting Examination Assistance on Docketed Cases*, issued on June 24, 2016, effective on August 29, 2016.

AUDIENCE

Appeals

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8.7.18

Return Preparer Misconduct Cases

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8.7.18.1

(08-29-2016)

**Return Preparer
Misconduct (RPM)
Cases**

- (1) Unscrupulous return preparers may alter the taxpayer tax data (e.g. include false dependents, expenses, deductions, credits, income) and/or misdirect a portion or all of the refund. The issue of RPM may arise through taxpayer initiated contact (for example, Toll-Free, Field Assistance, Taxpayer Advocate Service) or through IRS enforcement investigative processes (e.g. Revenue Agent or Tax Compliance Officer contact, Automated Underreporter correspondence, campus examination correspondence, Revenue Officer contact, Criminal Investigation inquiries).
- (2) Taxpayers who claim to be a victim of return preparer misconduct may submit a complaint and the required documentation to the IRS to request assistance and relief.
- (3) Refer to IRM 25.24.2, *Return Preparer Misconduct Victim Assistance Specialized Accounts Management Processing*, for more information.
- (4) An open complaint with the Identity Theft Victim Assistance will be indicated with an Integrated Data Retrieval System (IDRS) control with either "RPMC" for Identity Theft Victim Assistance - Accounts Management (IDTVA-A) or "IDI" for Identity Theft Victim Assistance - Compliance (IDTVA-C).
- (5) Fully allowed or partially allowed complaints will be noted on IDRS with a Transaction Code 971 AC 504 with a RPM category code of RPM1, RPM2, RPM3 or RPM4.
- (6) The Service's policy statement to assist victims of RPM can be found at IRM 1.2.24.2, *Policy Statement 25-2*.
- (7) Additional information can be found at http://appeals.web.irs.gov/tech_services/rpm/default.htm.

8.7.18.1.1

(05-23-2016)

**Return Preparer
Misconduct Definition**

- (1) Return preparer misconduct generally involves the orchestrated preparation and filing of false income tax returns (in either paper or electronic form) by preparers who may claim:
 - a. Inflated personal or business expenses;
 - b. False deductions;
 - c. Unallowable credits;
 - d. Excessive exemptions; or
 - e. Fraudulent tax credits such as the Earned Income Tax Credit (EITC).
- (2) RPM may also involve a return preparer who misdirects the refund to the return preparer's account.
- (3) The preparer's clients may or may not have knowledge of the false expenses, deductions, exemptions, and/or credits shown on their tax returns.

Example: A taxpayer used a preparer in 2013 to prepare and file Form 1040. The preparer changed the return by increasing the withholding tax claimed and diverted the excess refund into the preparer's personal account.

8.7.18.1.2

(05-23-2016)

**Return Preparer
Definitions**

- (1) Signing Preparer - Preparer information appears on the processed tax return.

Note: An individual who prepares federal tax returns for compensation is required to have a Preparer Tax Identification Number (PTIN) issued by IRS and must enter it on every tax return prepared for compensation along with the preparer's name and signature. Any preparer with a PTIN is in the business of preparing tax returns or has held themselves out as in the business of preparing tax returns.

- (2) Ghost Preparer / Non-Signing Preparer - No preparer information appears on the processed tax return but the return was not self prepared (for purposes of this guidance only).

Note: An individual who fails to identify themselves as a paid preparer on the tax return is considered a ghost preparer. There is no SSN, PTIN, EIN, or other identifying number accompanying the return to identify the return preparer.

Note: The definitions in (1) and (2) above are for the purposes of this guidance only.

- (3) RPM Complaint - Taxpayers alleging preparer misconduct are generally required to provide Form 14157 - A, *Tax Return Preparer Fraud or Misconduct Affidavit*, signed under penalties of perjury and Form 14157, *Return Preparer Complaint*, along with additional required documentation to support their allegations. Refer to IRM 8.7.18.1.4 for general documentation requirements.
- (4) Complete Complaint - All required documentation is provided and the preparer information is considered verified and valid.
- (5) Acceptance of Complaint - Acceptance of an RPM complaint is dependent upon the receipt of required documentation, verification of the preparer and the facts and circumstances of each complaint gathered from the taxpayer's documentation and account research. When a complaint is accepted, the IRS will determine the type of relief to which the taxpayer is entitled.
- (6) Actual Return or Return as Intended to be Filed - Taxpayer's tax return submitted with the RPM complaint reflecting the return unaltered by the preparer and as intended to be filed.
- (7) Relief / Resolution - The actions that the IRS will take on account, which are dependent on the category of the misconduct discussed in IRM 8.7.18.1.3. The relief granted by the IRS generally takes one of the following forms:
- Taxpayer's actual return (return as intended to be filed) is accepted as the return of record and account is adjusted to reflect that return.
 - Removal of the preparer portion of the refund attributable to preparer misconduct using General Ledger (GL) account.
 - Issuance of an additional refund plus interest as required by law.
- (8) Taxpayer Portion of a Refund - Any portion of the refund received or determined to be received by the taxpayer or any portion of the refund where the taxpayer received benefit (e.g. Refund offset to legitimate liability including BFS offsets).
- (9) Preparer Portion of a Refund - Portion of the refund resulting from the altered data on the processed tax return or portion of the refund misdirected to the preparer.

8.7.18.1.3
(05-23-2016)
RPM Categories

- (1) RPM complaints have been categorized into four (4) basic fact patterns.
- (2) Within each of the 4 categories, different procedures may apply depending upon the specific facts and circumstances, such as whether there is a signing preparer or a non-signing preparer (ghost), and/or the method of refund issuance (e.g., refund anticipation check (RAC), split refund, paper check).
- (3) These facts and circumstances determine the specific documentation requirements for each category. Verification requirements and account information will determine the treatment stream and whether the taxpayer is entitled to a refund or a portion of the refund misdirected by the preparer.

8.7.18.1.3.1
(05-23-2016)
Category 1 Unauthorized Filing

- (1) An unauthorized filing may occur when a taxpayer was in contact with a preparer and did not sign or authorize the filing of a return, but a return was filed with the taxpayer's name and taxpayer identifying number.
- (2) The IRS may administratively adjust the taxpayer's account to reflect the actual return as intended and remove the portion of the refund attributable to preparer misconduct.
- (3) Taxpayer may receive a refund for the amount reflected on the actual return as intended that was not received.
- (4) Refer to IRM 25.24.2.3.4, *Identifying RPM Category*, for more information and examples.

8.7.18.1.3.2
(05-23-2016)
Category 2 Authorized Filing, Altered Return Information and No Additional Refund Due to the Taxpayer

- (1) An altered return may occur when a taxpayer was in contact with a preparer and did authorize a return filing, but states tax data (exemptions, income, expenses, deductions, credits, etc.) on his/her return was altered before it was filed or the return otherwise includes items which the taxpayer did not authorize.
- (2) The IRS may administratively adjust the taxpayer's account to reflect the taxpayer's actual return and remove the portion of the refund attributable to preparer misconduct.
- (3) If the taxpayer is in a balance due situation after processing the actual return, the taxpayer is liable for the amount owed. The taxpayer is not, however, liable for the preparer portion of a refund.
- (4) Refer to IRM 25.24.2.3.4, *Identifying RPM Category*, for more information and examples.

8.7.18.1.3.3
(05-23-2016)
Category 3 Authorized Filing, Altered Return Information and the Taxpayer is Requesting Additional Refund

- (1) An altered return may occur when a taxpayer was in contact with a preparer and authorized a return filing, but the tax data (exemptions, income, expenses, deductions, credits, etc.) on the return was altered before it was filed or the return includes items which the taxpayer did not authorize and the taxpayer is seeking another refund.
- (2) The IRS may administratively adjust the taxpayer's account to reflect the taxpayer's actual return and remove the portion of the refund attributable to preparer misconduct and the taxpayer may receive a refund for the amount of the refund from his/her actual return that was not received.

- (3) Refer to IRM 25.24.2.3.4, *Identifying RPM Category*, for more information and examples.
- 8.7.18.1.3.4
(05-23-2016)
Category 4 Misdirected Refund Only and Taxpayer Requesting Additional Refund
- (1) A misdirected refund may occur when a taxpayer was in contact with a preparer and did authorize a return filing, but states although no tax data was altered, the direct deposit information or address was altered diverting all or a portion of the refund to the preparer.
- (2) The IRS may administratively remove the portion of the refund misdirected to the preparer and the taxpayer may receive a refund.
- (3) Refer to IRM 25.24.2.3.4, *Identifying RPM Category*, for more information and examples.
- 8.7.18.1.4
(05-23-2016)
RPM General Documentation Requirements
- (1) The taxpayer is required to submit documentation to support his/her claim of preparer misconduct.
- (2) Documentation requirements may vary depending upon the category, requested relief, and whether the original return was signed by a preparer or is considered a ghost preparer.
- Note:** If the specific category could not be determined based on the information the taxpayer provided then reference Category 2 for requirements if taxpayer is not seeking an additional refund. However, if there is indication that the taxpayer is seeking an additional refund or this determination cannot be made then reference Category 3 requirements.
- (3) For a full list of acceptable documentation, refer to IRM 25.24.1.3, *RPM General Documentation Requirements*.
- (4) Incomplete documentation will result in the denial of the complaint by IDTVA.
- 8.7.18.2
(05-23-2016)
Types of RPM Relief
- (1) The types of RPM relief is dependent upon the category of the complaint.
- (2) For Category 1 cases, refer to IRM 25.24.2.6.1, *Category 1 - Unauthorized Filing*, for minimum documentation requirements and relief available.
- (3) For Category 2 cases, refer to IRM 25.24.2.6.2, *Category 2 - Authorized Filing, Altered Return Information and No Additional Refund is Due to the Taxpayer*, for minimum documentation requirements and relief available.
- (4) For Category 3 cases, refer to IRM 25.24.2.6.3, *Category 3 - Authorized Filing, Altered Return Information and the Taxpayer is Requesting an Additional Refund*, for minimum documentation requirements and relief available.
- (5) For Category 4 cases, refer to IRM 25.24.2.6.4, *Category 4 - Misdirected Refund Only and the Taxpayer is Requesting an Additional Refund*, for minimum documentation requirements and relief available.
- (6) In Category 1, Category 2, and Category 3 cases, the original filed return will be considered a nullity and the new return will be recognized as the original filing. In Category 4 cases, the altered return is not a nullity.

8.7.18.3
(05-23-2016)
**Incomplete Return
Preparer Misconduct
Complaints**

- (1) When in receipt of a complaint, refer to the sections below for instructions particular to the work stream.
- (2) Refer to IRM 25.24.2.6.5.1, *Incomplete Complaints*, for IDTVA actions when the taxpayer has not provided all required documentation.
- (3) Taxpayers are given an opportunity to complete the complaint. If the minimum documentation has not been provided, IDTVA will disallow the complaint.
- (4) IDTVA will use the procedures in IRM 25.24.2.6.6.1, *Disallowance*, when a RPM complaint is disallowed.
- (5) IDTVA will issue Letter 105c when a full disallowance is made on a Category 1, 3 or 4 case. For Category 2, this category is not a claim for refund and therefore a no consideration Letter 916c will be sent by IDTVA. The letters will provide the taxpayer with the right to file suit only. Cases will not be sent to Appeals solely for consideration of incomplete complaints since there are no reasonable cause considerations. Appeals does not have authority to provide victim assistance specialized account processing when IDTVA concludes that RPM is not present. Appeals may still consider the underlying tax issue in cases once IDTVA determines that RPM is not present.

Exception: Appeals may see partially disallowed incomplete complaints as explained in the next paragraph.

- (6) Partial disallowances may arise in Category 1, Category 3 and Category 4 cases. IDTVA will issue Letter 106c when a partial disallowance is made. Appeals may receive a case where the only issue in the disallowance is the disallowance of a refund based on an expired Refund Statute Expiration Date (RSED). The Appeals Technical Employee (ATE) will need to consider whether the RSED was still open at the time the complaint was made.
- (7) Cases that were previously worked and denied by IDTVA will have a TC290 0 with a RC131. If this is on the account, the case should not be referred to IDTVA.
- (8) Taxpayers who later secure documentation to complete their complaint should be directed to file the complaint per the instructions on the Form 14157-A, *Tax Return Preparer Fraud or Misconduct Affidavit*, for reconsideration. ATEs will continue to work the underlying tax issue.

8.7.18.4
(05-23-2016)
**RPM Raised in
Non-Docketed Cases**

- (1) If a taxpayer raises potential return preparer misconduct in a non-docketed case in Appeals that has not previously been considered by the Service, follow the procedures in IRM 8.6.1.6.4, *Taxpayer Raises New Issue*. Place Feature Code "RM" on ACDS.
- (2) If a taxpayer provides new information with respect to a denied return preparer misconduct complaint that was never previously provided to Compliance, then follow the procedures in IRM 8.6.1.6.5, *Taxpayer Provides New Information*. Place Feature Code "RM" on ACDS.

Note: If the exception in IRM 8.6.1.6.5 (2) applies, then use the referral procedures in IRM 8.7.18.6 and retain jurisdiction of the case. Place Feature Code "RM" on ACDS and indicate this is a non-docketed case on Form 10467, *Appeals Division Feedback Report and Transmittal Memorandum*.

8.7.18.5
(08-29-2016)

RPM Raised in Docketed Cases

- (1) When a taxpayer raises potential ID theft in a **field sourced** case that has not been previously considered or provides new information with regards to the ID theft claim in a docketed case, the ATE will follow the Docketed Exam Assistance procedures in IRM 8.4.4, *Appeals Docketed Cases, Examination Assistance Requests*. Place Feature Code "RM" on ACDS.
- (2) When a taxpayer raises potential RPM or provides new information in a **campus sourced** docketed case, the ATE will refer it to the Identity Theft Victim Assistance Unit (IDTVA-C) for review and determination. Place Feature Code "RM" on ACDS.
- (3) The ATE will immediately notify the Counsel Attorney assigned to the case (or the Associate Area Counsel if an attorney has not been assigned) when it is learned that the petitioner is pursuing a complaint for RPM.
- (4) The ATE will prepare a package to refer to the IDTVA-C mailbox.
- (5) The package will include:
 - a. Form 10467, *Appeals Division Feedback Report and Transmittal Memorandum*, indicating that this is part of a docketed case.
 - b. The Form 14157, *Return Preparer Complaint*, submitted by the taxpayer.
 - c. The Form 14157-A, *Tax Return Preparer or Fraud Misconduct Affidavit*, submitted by the taxpayer.
 - d. All supporting documentation submitted by the taxpayer.
- (6) The ATE will forward the package by secure email for review to the Compliance RPM Liaison at "**W&I IDT:KC:SPEC-EXAM" with read receipt.
- (7) IDTVA-C will mark these requests as priority and will make every attempt to make a determination within 45 days.
- (8) If the complaint is denied by IDTVA-C, they will provide the reasons for the decision to the ATE by secure email.
- (9) If the complaint is approved by IDTVA-C, they will provide the ATE with a detailed description of the relief granted by secure email. Refer to IRM 25.24.2.6.7, *Required Account Action*, for instructions on adjusting accounts with RPM present. Depending on the category and type of adjustments needed, the ATE will prepare:
 - a. Form 3870 identifying the account adjustments
 - b. Form 3177 to post the TC 971 AC 504 for partially and allowed complaints
 - c. Form 2363 to update the Name, Address, or Filing Status
- (10) When tax computations are necessary, the ATE will have a Tax Computation Specialist (TCS) prepare the Form 5278 and Form 5403 Instructions.
- (11) The ATE should seek assistance from Counsel in the preparation of the decision document until a template is available on Appeals Generator of Forms and Letters (APGolf).
- (12) The ATE will resolve the remainder of the case as appropriate using existing procedures.
- (13) If you determine your taxpayer was a victim of RPM and adjustments are necessary (interim adjustments or adjustments made at closing), send the

necessary documents via encrypted email to “*AP-PQCS-APS-Campus-BSC ACDS Update” or to
Brookhaven APS
IRS Appeals
1040 Waverly Avenue, Stop 906
Holtsville, NY 11742-1129

8.7.18.6
(05-23-2016)
**RPM Raised in
Collection Due Process
(CDP) Cases**

- (1) When a taxpayer raises potential RPM or provides new information in a collection due process case that has not previously been considered by Compliance, it will be referred to the Identity Theft Victim Assistance Unit (IDTVA-C) for review and determination. Place Feature Code “RM” on ACDS.
- (2) The ATE will prepare a package to refer to the IDTVA-C mailbox.
- (3) The package will include:
 - a. Form 10467, *Appeals Division Feedback Report and Transmittal Memorandum*, identifying that this is part of a CDP case.
 - b. The Form 14157, *Return Preparer Complaint*, submitted by the taxpayer.
 - c. The Form 14157-A, *Tax Return Preparer or Fraud Misconduct Affidavit*, submitted by the taxpayer.
 - d. All supporting documentation submitted by the taxpayer.
- (4) The ATE will forward the package by secure email to the Compliance RPM Liaison for review “*W&I IDT:KC:SPEC-EXAM” with read receipt.
- (5) IDTVA-C will mark these requests as priority and will make every attempt to make a determination within 45 days.
- (6) If the complaint is denied by IDTVA-C, they will issue a denial letter and provide a copy of the denial letter to the ATE by secure email. Refer to IRM 8.7.18.3 for incomplete complaints.
- (7) If the complaint is approved by IDTVA-C, they will provide the ATE with a detailed description of the relief granted and IDTVA-C will make all necessary account adjustments. They will notify the ATE by email.
- (8) The ATE will resolve the remainder of the case as appropriate using existing procedures.

8.7.18.7
(05-23-2016)
**RPM Raised in Other
Types of Collection
Cases**

- (1) Follow the procedures in IRM 8.7.18.6 and identify the type of case on Form 10467, *Appeals Division Feedback Report and Transmittal Memorandum*, and place Feature Code “RM” on ACDS.

