



MANUAL TRANSMITTAL

Department of the Treasury
Internal Revenue Service

8.10.2

SEPTEMBER 4, 2012

EFFECTIVE DATE

(10-01-2012)

PURPOSE

- (1) This transmits revised IRM 8.10.2, Appeals Reports and Projects, Reports to Outside Officials.

MATERIAL CHANGES

- (1) Made minor editorial changes throughout to correct spelling and punctuation errors and citations.
- (2) Updated IRM 8.10.2.1.6 (3) to change the operating division title from LMSB to LB&I. The procedure now states that a copy of any report containing specific examples of tax abuses in the international area should be furnished to the Large Business & International (LB&I) Director, International Business Compliance (IBC) or International Individual Compliance (IIC),
- (3) Updated IRM 8.10.2.1.2.2 to clarify the procedures for Appeals Technical Employees when making a referral or reporting to the Office of Professional Responsibility (OPR) to reflect the Small Business Work Opportunity Tax Act of 2007 (SBWOTA) law that was enacted on May 25, 2007.
- (4) Clarified IRM 8.10.2.1.2.3, *Referrals to Compliance*, to reference registered tax return preparers as well as unenrolled preparers. Added IRM 8.10.2.1.2.3 (2) to provide a link to an internal use list maintained on the Return Preparer Office website of active enrolled agents and registered tax return preparers that can be viewed to confirm credentials.
- (5) Revised IRM to reflect new organizational titles resulting from the Appeals 2012 Alignment Project.
- (6) Removed reference to Form 3558, Technical Coordination Report, in IRM 8.10.2.1.6 which is obsolete.

EFFECT ON OTHER DOCUMENTS

This IRM supersedes IRM 8.10.2, Appeals Reports and Projects, Reports to Outside Officials, dated October 19, 2007.

AUDIENCE

Appeals

Susan L. Latham
Director, Policy, Quality and Case Support

8.10.2

Reports to Outside Officials

Table of Contents

8.10.2.1 Reports to Officials Outside of Appeals - Reporting Nontax Criminal Violations

8.10.2.1.1 Reporting of Bribes and Bribery Attempts

8.10.2.1.2 Reporting of Conduct or Practice Violations by Practitioners

8.10.2.1.2.1 Report to TIGTA

8.10.2.1.2.2 Report to the Office of Professional Responsibility

8.10.2.1.2.3 Referrals to Compliance

8.10.2.1.3 Reporting Racketeer Infiltration of Legitimate Businesses

8.10.2.1.4 Maintaining Liaison in Special Enforcement Program Cases

8.10.2.1.5 Legislative and Regulatory Recommendations

8.10.2.1.6 Technical Coordination Program

8.10.2.1.7 Tax Abuses and Administrative Problems—Report to Commissioner

8.10.2.1
(10-01-2012)
**Reports to Officials
Outside of Appeals -
Reporting Nontax
Criminal Violations**

- (1) Various circumstances require Appeals personnel to prepare reports for officials outside Appeals.
- (2) While performing their official duties, Appeals personnel may observe a nontax crime during official duty hours or in their official capacities or receive information relating to a nontax crime under the enforcement jurisdiction of another Federal Agency, or a State or local government authority. Such information or observations may constitute return information as defined in IRC 6103(b), or nontax information not protected by IRC 6103.
- (3) Appeals personnel should be aware of such instances for possible disclosure to the appropriate Federal agency pursuant to IRC 6103(i)(3), (See Delegation Order No. 11-2 located in IRM 1.2.49-2 Delegation Order 11-2 (formerly DO 156 rev. 17) Reference Chart*Accounting Required) or to Federal, State or local law enforcement officials under procedures in IRM 11.3.34, *Disclosure of Nontax Criminal Violations*, and IRM 11.3.28, *Disclosure to Federal Agencies for Administration of Nontax Criminal Laws*, whichever provision is applicable.
- (4) Information pertaining to possible disclosures to be made under IRC 6103(i)(3) will be reported by memorandum, through channels, to the responsible Disclosure Manager. The memorandum should contain the following information:
 - a. Name, social security number, address, and aliases of subject (if known),
 - b. Business or occupation of subject (if known),
 - c. Facts and circumstances surrounding the nontax violation,
 - d. U.S. Code sections believed violated,
 - e. Specific source of information, i.e., 3rd party, and the circumstances under which the information was obtained,
 - f. Agency to whom this violation would be of interest, e.g., U.S. Attorney (Judicial District), Strike Force Attorney (location), or other agency (specify),
 - g. Privacy Act system of records from which information was obtained, and
 - h. A statement as to whether or not disclosure would identify a confidential informant or seriously impair a civil or criminal tax investigation.
- (5) The employees or officials described in this IRM section are not "originating function" employees or officials, as defined in Rev. Proc. 2012-18, because Appeals does not review their determinations. Appeals employees may communicate with non-originating function employees of officials without providing the taxpayer/representative an opportunity to participate. See sections 2.07 and 2.08 of Rev. Proc. 2012-18, and IRM 8.1.10, Appeals Function, Ex Parte Communications, for more information.
- (6) For emergency situations, such as when an individual's life or safety is threatened, refer to IRM 11.3.28.9, *Disclosure in Emergency Situations Pursuant to IRC §6103(i)(3)(B)*.

8.10.2.1.1
(10-19-2007)
**Reporting of Bribes and
Bribery Attempts**

- (1) Bribe offers are often subtle and indirect. When bribe overtures are recognized by employees, they must promptly report them so that trained personnel can evaluate and initiate an investigation. Any Appeals employee who believes a bribe attempt has been made must:
 - a. avoid any implication of acceptance or rejection but hold matter in abeyance;
 - b. report the attempt immediately to Treasury Inspector General for Tax Administration (TIGTA);

- c. submit a comprehensive memorandum to TIGTA as soon as possible; and
- d. cooperate fully in any ensuing investigation and avoid unnecessary discussion.

8.10.2.1.2
(10-01-2012)
**Reporting of Conduct or
Practice Violations by
Practitioners**

- (1) Treasury Department Circular No. 230, Rules Governing Practice before the Internal Revenue Service, provides information on the responsibilities of the Office of Professional Responsibility and rules applicable to disciplinary proceedings against practitioners.
- (2) Returns and return information may be disclosed to the Office of Professional Responsibility, without written request, when administering the duties set forth in Circular No. 230.

8.10.2.1.2.1
(10-19-2007)
Report to TIGTA

- (1) Service employees are required to report directly to TIGTA (Treasury Inspector General for Tax Administration) all information concerning unethical practice by tax practitioners which also involves either alleged misconduct by another Service employee, or an attempt by the practitioner to corrupt another Service employee, Treasury Order 115-01, par. 5.a (1) and (2). The report should contain sufficient detail to substantiate the information regarding each violation.
- (2) No report to the Office of Professional Responsibility will be made on any case referred to TIGTA. When appropriate, TIGTA will advise the Office of Professional Responsibility of the complaint against the practitioner.

8.10.2.1.2.2
(10-01-2012)
**Report to the Office of
Professional
Responsibility**

- (1) The Office of Professional Responsibility (OPR) exercises jurisdiction over all tax professionals who interact with the tax administration system. This includes Attorneys, CPAs, Enrolled Agents, Enrolled Actuaries and Registered Tax Return Preparers. OPR also exercises jurisdiction over any individual who for compensation prepares, or assists in the preparation of, all or a substantial portion of a document pertaining to any taxpayer's tax liability for submission to the Internal Revenue Service.
 - a. Refer all IRC 6694(b) preparer penalties asserted by Appeals against an attorney, certified public accountant or enrolled agent, to the Office of Professional Responsibility. OPR does its own independent decision-making about whether the section 6694(b) penalty reflects significantly enough on the practitioner's conduct to conclude that the practitioner is not fit to practice anymore
- (2) In matters involving non-willful conduct, Appeals Technical Employees should exercise discretion in making referrals of specific cases. A referral should only be made when it can be established that the preparer has a pattern of failing to meet the required standards of Circular 230, "Regulations Governing Practice before the Internal Revenue Service." An isolated instance in which a penalty may apply should not, in and of itself, require a referral unless willful conduct is involved. Accordingly, the imposition of penalties under IRC 6694(a) and IRC 6695(a) through (g) should not automatically generate a referral to the Director of the OPR. For a further discussion regarding referral criteria, see IRM 4.11.55.4.2.2, "When Should a Referral Be Made to the Office of Professional Responsibility (OPR)?"
- (3) ATEs may consider referring to OPR the original advisor or preparer of a position where they sustain the tax adjustment but abate the accuracy-related penalty based on the taxpayer's reasonable reliance on the original advisor or

preparer. OPR will independently take a look at the original advisor or preparer for competence and other Circular 230 violations. Consideration need not be given to whether the tax advice was good or bad, but rather whether there might be Circular 230 issue such as conflict of interest, failure to exercise the appropriate level of due diligence, evidence that the practitioner counseled, or encouraged the taxpayer to violate tax statutes or participated in presenting the position on the tax return in a manner designed to mislead the agency.

- (4) When making a referral to OPR, the Appeals Technical Employee will:
- Prepare Form 8484, Report of Suspected Practitioner Misconduct. See IRM 20.1.6.12.3 "Referral to the Office of Professional Responsibility".
 - Include the Appeals Case Memo as the report to the Office of Professional Responsibility. Care should be taken to ensure that the memo contains all the necessary information.
 - Secure approval of the ATM and send to the Office of Professional Responsibility. The report should contain sufficient detail, including any documentation or exhibits, to substantiate the information regarding each specific violation.

8.10.2.1.2.3
(10-01-2012)
Referrals to Compliance

- (1) Registered tax return preparers or unenrolled preparers of returns are not permitted to represent taxpayers before Appeals.
- Section 10.3(f)(3) of Circular 230 authorizes registered return preparers to represent taxpayers only before revenue agents or similar IRS employees and only in connection with an examination of the taxable year or period covered by a return prepared and signed by the registered return preparer.
- (2) Conduct of a return preparer that would render the preparer ineligible to appear as the taxpayer's representative should be reported to the appropriate Return Preparer Coordinator using Form 10467, *Appeals Division Feedback Report and Transmittal Memorandum*.
- (3) The Return Preparer Office maintains a list of active enrolled agents and registered tax return preparers. These lists are updated monthly and for internal purposes only. You can view the lists on the *Return Preparer Office website*. You can use the lists to confirm individuals' credentials, including in response to external inquiries, but you should not provide them in their entirety to any external sources.

8.10.2.1.3
(10-01-2012)
Reporting Racketeer Infiltration of Legitimate Businesses

- (1) Information about racketeers who infiltrate legitimate businesses should be reported by memorandum to the appropriate Special Agent in Charge, Criminal Investigation Division. Such action is not precluded by the fact that the legitimate income has been correctly reported.
- (2) The memorandum should include to the extent known:
- a. name, address and social security number (SSN) of the racketeer;
 - b. name, address, and employee identification number (EIN) of the business and description of the business activities;
 - c. all known or suspected aliases, nominees, and close business associates;
 - d. nature and extent of the investment in and control of business;
 - e. if the information relates to extensive or questionable use of a financial institution's services, the nature and extent thereof; and
 - f. all other pertinent data including source of information and how obtained.

8.10.2.1.4
(10-01-2012)

**Maintaining Liaison in
Special Enforcement
Program Cases**

- (1) To wage a more effective fight against organized crime, the Federal Government initiated a program designed to strike a blow at key members of the underworld. The Criminal Investigation Division and Department of Justice is coordinating a program in which Federal agencies concentrate enforcement efforts on designated organized crime subjects in selected cities. Each project is called a "Strike Force." The Service participates in each Strike Force by designating one or more persons to represent the Internal Revenue Service.
- (2) Normal procedures governing review and processing of organized crime cases are applicable to tax cases resulting from the strike force program. For cases protested to Appeals, the case file will be identified or marked so as to indicate a Strike Force connection and processing of the case will be expedited. The Appeals Office having jurisdiction will establish liaison with IRS Strike Force representatives to keep informed of new developments and to inform the Strike Force of the progress and status of the case.

8.10.2.1.5
(10-19-2007)

**Legislative and
Regulatory
Recommendations**

- (1) The Internal Revenue Service submits tax legislative recommendations and proposed tax regulations to the Treasury Department. Every officer and employee whose work affords an opportunity to recognize needed changes should be alert for opportunities to make recommendations to this program. Appeals employees in the field are especially in a position to observe, evaluate, and submit solutions to tax administration and compliance problems such as improvement in taxpayer relations, simplification, tax avoidance schemes and efforts to counter them, tax loopholes, abuses and inequities.
- (2) Recommendations involving changes in tax legislation and tax regulations should not be processed through the Incentive Awards Program but through the Technical Coordination Program described below.
- (3) Such recommendations may, after enactment or adoption, be presented for award consideration and recognition, using Form 13380. However, awards will not be paid in advance of enactment of legislation or implementation of a suggested change in a regulation.

8.10.2.1.6
(10-01-2012)

**Technical Coordination
Program**

- (1) A Technical Coordination Report is submitted in memorandum form to report tax abuses, inequities, or administrative problems in the interpretation and application of the tax laws that are proper for consideration by Headquarters in connection with the clarification of Service positions, amendment of regulations, or legislative recommendations.
- (2) The memorandum prepared by Appeals field personnel will be submitted through channels to the Area Director for evaluation and concurrence. Reports referred by the Area Director to the Director Field Operations will typically include operational procedures in Appeals or settlement guidelines. The Director Field Operations will forward the memorandum to the Director, Tax Policy and Procedure and/or Director, Domestic Operations or Director, International Operations.
- (3) A copy of any report containing specific examples of tax abuses in the international area should also be furnished to the Large Business & International (LB&I) Director, International Business Compliance (IBC) or International Individual Compliance (IIC).
- (4) Reports concerning any phase of Employee Plans or Exempt Organizations operations, whether pertaining to rulings, regulations, compliance, collection,

legislation, forms, etc. should be directed to the TEGE Operating Division, Director, Employee Plans or Director, Exempt Organizations.

- (5) Reports (not concerning EP/EO matters) that involve tax forms or instructions or taxpayer and other technical publications, should be directed to the W&I, Director Media and Publications, Tax Forms and Publications Division.
- (6) Reports (not concerning EP/EO matters) that suggest, or recommend revisions of, revenue rulings, revenue procedures or the Code or regulations should be directed to the Deputy Chief Counsel (Technical).

8.10.2.1.7
(10-01-2012)
Tax Abuses and
Administrative
Problems—Report to
Commissioner

- (1) Technical Coordination Reports marked “COMMISSIONER’S ATTENTION” should be submitted where significant tax abuses, inequities and administrative problems are noted, and one or more of the following characteristics are present:
 - a. A large number of taxpayers are affected.
 - b. A large amount of revenue or potential revenue is involved.
 - c. The matter relates to a key policy of the President, the Secretary of the Treasury, or Congress.
 - d. The matter is causing or may cause a significant amount of adverse publicity or public controversy.
 - e. The matter is creating significant problems in the audit of returns, appeals, or litigation.
- (2) These reports are submitted on a memorandum explaining why the matter was selected for the Commissioner’s attention. The memorandum is sent through channels to the Area Director, who upon concurrence, forwards a copy of the report to the Chief Appeals as well as the Director, Tax Policy and Procedure and/or Director, Domestic Operations or Director, International Operations.

R
Reports to Outside Officials

Bribery Attempts	1
Bribes.....	1
Circular 230	2, 3
Criminal Investigation Division	3
Delegation Order No. 11-2	1
Employee Plans or Exempt Organizations	4
Form 13380	4
International Area	4
IRC 6103	1
IRC 6694(a)	2
IRM 11.3.28	1
IRM 11.3.34	1

IRM 1.2.49	1
Office of Professional Responsibility	2
Organized Crime Cases	4
Racketeers.....	3
Reporting Non-tax Criminal Violations	1
Rev. Proc. 81-38.....	3
Strike Force	4
Tax Legislation.....	4
Technical Coordination Report.....	4, 5
Treasury Inspector General for Tax Administration (TIGTA)	2
Treasury Order 115-01	2
Unenrolled Preparers	3
W&I, Director Media and Publications	4

