



# MANUAL TRANSMITTAL

Department of the Treasury  
Internal Revenue Service

9.5.1

FEBRUARY 26, 2025

## EFFECTIVE DATE

(02-26-2025)

## PURPOSE

- (1) This transmits revised IRM 9.5.1, Administrative Investigations and General Investigation Procedures.

## MATERIAL CHANGES

- (1) Updated Internal Controls.
- (2) Updated all CI Connection references to the appropriate SharePoint sites throughout IRM.
- (3) Subsection 9.5.1.3.1, added mailing addresses and fax numbers for CAF units.
- (4) Exhibit 9.5.1-1, removed.
- (5) Exhibit 9.5.1-2, renumbered to 9.5.1-1, and updated State Mapping for POA/CAF Program.
- (6) Editorial changes made throughout the IRM for clarity.

## EFFECT ON OTHER DOCUMENTS

This IRM supersedes IRM 9.5.1 dated July 30, 2024.

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9.5.1

Administrative Investigations and General Investigative Procedures

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9.5.1.1  
(02-26-2025)  
**Program Scope and Objectives**

- (1) Purpose: This section focuses on administrative investigations (i.e., investigations worked outside of the grand jury process).
- (2) Audience: All CI employees.
- (3) Policy Owner: Director, Financial Crimes (FC).
- (4) Program Owner: Director, FC.
- (5) Primary Stakeholders: Director, FC, and Director, Refund Fraud & Investigative Support (RFIS).
- (6) Contact Information: To make changes to this IRM section email CIHQIRM@ci.irs.gov.
- (7) Goal: To discuss general investigative issues and rules of evidence applicable to all types of investigations, including grand jury investigations.

9.5.1.1.1  
(02-06-2024)  
**Background**

- (1) Most administrative investigations involve Title 26 and tax-related Title 18 violations. Administrative investigations may be worked whenever a special agent anticipates working without the cooperation of other agencies.

9.5.1.1.2  
(02-06-2024)  
**Authority**

- (1) See IRM 9.1.2, Authority, for the delegated authority relating to IRM 9.5.1, Administrative Investigations.

9.5.1.1.3  
(02-26-2025)  
**Roles and Responsibilities**

- (1) The Director, FC and Director, RFIS are responsible for developing, maintaining, and overseeing this IRM and ensuring compliance with current policies and procedures.
- (2) Special agents are authorized to assist the attorney for the government in conducting investigations, preparing for indictment and trial, and obtaining evidence relative to sentencing in matters involving potential violations of Title 26, Title 18, and/or Title 31 of the United States Code committed in contravention of tax, bank secrecy, or money laundering statutes. An attorney for the government or Strike Force Attorney may request special agents to assist in such investigations by a Federal grand jury, or to make presentations to a Federal grand jury.

9.5.1.1.4  
(02-26-2025)  
**Program Management and Review**

- (1) The Director, FC and Director, RFIS will:
  - a. Review this IRM annually.
  - b. Update this IRM when content is no longer accurate and reliable to ensure employees correctly complete their work assignments and for consistent administration of the tax laws.
  - c. Incorporate all permanent interim content into the next version of this IRM section prior to the expiration date.

9.5.1.1.5  
(02-26-2025)  
**Program Controls**

- (1) The Director, FC and Director, RFIS will review and oversee their programs as well as ensuring employee compliance with all applicable elements of this IRM.

9.5.1.1.6  
(02-06-2024)

#### Acronyms

- (1) The following table lists the terms and acronyms used throughout this IRM section and their definitions:

| Acronym | Definition   |
|---------|--|
| ADP     | Automated Data Processing                            |
| ATTI    | Abusive Transactions and Technical Issues            |
| BMF     | Business Master File                                 |
| BOD     | Business Operating Division                          |
| CAF     | Centralized Authorization File                       |
| CASE    | Communities Accessing and Sharing Expertise          |
| CI      | Criminal Investigations                              |
| CIMIS   | Criminal Investigation Management Information System |
| CIS     | Correspondence Imaging System                        |
| CT      | Criminal Tax   |
| DBA     | Doing Business As                                    |
| DLN     | Document Locator Number                              |
| DO      | Delegation Order                                     |
| DOJ     | Department of Justice                                |
| ELF     | Electronically Filed                                 |
| EUP     | Employee User Portal                                 |
| FLC     | File Location Code                                   |
| FOIA    | Freedom of Information Act                           |
| FRE     | Federal Rules of Evidence                            |
| FTA     | Fraud Technical Advisor                              |
| GI      | General Investigation                                |
| IDRS    | Integrated Data Retrieval System                     |
| IMT     | Intermediary Transaction                             |
| IMF     | Individual Master File                               |
| IRC     | Internal Revenue Code                                |
| LB&I    | Large Business and Investment                        |
| LDC     | Lead Development Center                              |
| LEM     | Law Enforcement Manual                               |
| MAMC    | Memphis Accounts Management Center                   |
| MeF     | Modernized e-File System                             |



|       |   |
|-------|---|
| MTRDB | Modernized Tax Return Database          |
| OAMC  | Ogden Accounts Management Center        |
| OFE   | Office of Fraud Enforcement             |
| OTSA  | Office of Tax Shelter Analysis          |
| PAMC  | Philadelphia Accounts Management Center |
| PI    | Primary Investigation                   |
| RFIS  | Refund Fraud and Investigative Support  |
| SA    | Special Agent                           |
| SAC   | Special Agent in Charge                 |
| SAR   | Special Agent Report                    |
| SB/SE | Small Business / Self Employed          |
| SCI   | Subject Criminal Investigation          |
| SSA   | Supervisory Special Agent               |
| SERP  | Servicewide Electronic Research Program |
| TIN   | Taxpayer Identification Number          |
| TRI   | Tax Return Inventory                    |
| TDA   | Taxpayer Delinquent Account             |
| TE/GE | Tax Exempt / Government Entities        |
| TECS  | Treasury Enforcement Computer System    |
| TFIA  | Tax Fraud Investigative Assistant       |
| TS    | Taxpayer Service                        |
| USAO  | US Attorney's Office                    |

9.5.1.1.7  
(07-30-2024)  
**Related Resources**

- (1) IRM 1.2.1.5, Policy Statements for the Examining Process.
- (2) IRM 1.2.2.15.14, Delegation Order 25-14, Centralized Authorization File Access (CAF).
- (3) IRM 2.3, IDRS Terminal Responses.
- (4) IRM 2.4, IDRS Terminal Input.
- (5) IRM 2.9, Integrated Data Retrieval System (IDRS) Procedure.
- (6) IRM 4.32.2, Abusive Transactions, The Abusive Transactions (AT) Process.
- (7) IRM 9.4.1, Investigation Initiation.

- (8) IRM 9.4.9, Investigative Techniques, Search Warrants, Evidence, and Chain of Custody.
- (9) IRM 9.5.8, Investigative Reports
- (10) IRM 9.6.4, Trial.
- (11) IRM 9.9.1, Employee Criminal Investigation Management Information System (CIMIS) Responsibilities and Procedures.
- (12) IRM 11.3, Disclosure of Official Information.
- (13) IRM 25.1.4, Fraud Handbook, Administrative Joint Investigation.
- (14) Law Enforcement Manual (LEM) 9.14.4 - Automated Data Processing Account Controls.

## 9.5.1.2

(02-06-2024)

**Administrative  
Investigations**

- (1) Administrative investigations may be initiated whenever information indicating possible violations of tax, money laundering, or bank secrecy laws is received or developed by the Office of Fraud Enforcement (OFE), Lead Development Center (LDC), Refund Fraud and Investigative Support (RFIS), and/or a CI program/subprogram.
- (2) Administrative investigations are initiated (numbered) as general investigations (GI), primary investigations (PI), or subject criminal investigations (SCI) in CIMIS. For detailed descriptions of these three types of investigations (see IRM 9.4.1, Investigation Initiation).
- (3) The Special Agent in Charge (SAC) and/or the SAC's designee have the approval authority to authorize investigation of all information items which, after evaluation and screening, are deemed to warrant further inquiry (see IRM 9.9.1, Employee Criminal Investigation Management Information System (CIMIS) Responsibilities and Procedures).
- (4) A brief summary of the basis for opening the investigation should be prepared and retained in the administrative file. At the discretion of the SAC, the summary may be contained in a separate document, such as a memorandum prepared by the evaluating special agent, or it may be incorporated in an existing document used in the field office's investigation initiation process. The *Unified Checklist SharePoint site* contains a primary evaluation memorandum template for the investigation summary and referral recommendation.
- (5) The automated data processing (ADP) account control transaction code 914 must be placed on the appropriate master file module(s) for all Title 26 and tax-related Title 18 subject criminal investigations. Controls and procedures are discussed in Criminal Investigation Law Enforcement Manual (LEM) 9.14.4 - Automated Data Processing Account Controls on the *CI Virtual Library SharePoint site*.
- (6) All assigned investigations are subject to sufficient investigative inquiry to support the disposition recommendation in the report, except when surveyed.

## 9.5.1.2.1

(07-30-2024)

**Procedures in Financial Investigations**

- (1) Financial investigations, especially tax investigations, differ from most other types of criminal investigations in that (with the exception of crimes involving identity theft) the investigator generally begins with a known person and attempts to determine whether or not that person has committed a crime. In other types of criminal investigations, the investigator generally begins with a known crime and attempts to determine who committed it.
- (2) The purpose of a special agent's investigation is to obtain facts and evidence to determine whether the person under investigation has committed a criminal violation.
- (3) The special agent should first determine:
  - a. Which criminal statute or statutes are alleged to have been violated.
  - b. By whom, when, where, and by what means the offense was committed.
  - c. The elements of each alleged offense, what evidence must be obtained to establish the elements, and the probable sources of the evidence.
  - d. The timing and sequence of key interviews and service of summonses.
  - e. Whether the subject will be contacted for an initial interview.
  - f. In a Title 26 or tax-related Title 18 investigation, whether the subject's books and records have been previously examined.
  - g. What controls are currently in place on the ADP individual master file/business master file (IMF/BMF) accounts.
- (4) The special agent should begin each investigation quickly and complete it as expeditiously as possible.
- (5) The initial investigative activity should involve inspecting the subject's books and records and conducting other related inquiries to assess whether the investigation has criminal potential. These inquiries should include a review of the files of all relevant operating divisions – Small Business / Self Employed (SB/SE), Taxpayer Service (TS), Large Business and International (LB&I), Tax Exempt & Government Entities (TE/GE), and Criminal Investigation (CI) – to determine whether there is a pending or previous civil examination or criminal investigation relating to the subject. Other pertinent sources of information should be consulted (e.g., Treasury Enforcement Computer System (TECS), El Paso Intelligence Center (EPIC), Detroit Computing Center) to determine whether the subject is/was under investigation by another government agency.

**Note:** The EPIC inquiries are limited to narcotics investigations and must be made by/on behalf of a special agent.

- (6) The IRS-Criminal Investigation-Check for and Suspend Civil Activity Notification, Form 14584, is designed to determine any past or current civil activity regarding the subject/taxpayer and related entities, find it on the *Published Products Catalog SharePoint site*. Civil activity includes ongoing examinations and field collection activity for years and types of tax pertinent to the criminal case. The notification will disclose to the IRS civil functions the initiation of the SCI and applicable TC 914 controls related to the subject. The notification also requests that all civil activity be suspended. While prior civil actions relating to the taxpayer may rarely affect a criminal investigation, subsequent contacts with the taxpayer should be attempted only with the case agent's knowledge and consent. If the criminal case is a non-tax investigation, this notification is not necessary. The Form 14584 should be sent to the Territory Managers for

SB/SE Examination-Technical Services and SB/SE Collection Advisory-Technical Services. For field offices requesting acknowledgement of delivery, it is recommended that the router request a “read and/ or delivery receipt” in the e-mail. In addition to sending the form to the Territory Managers for (Examination and Collection Advisory), this notification should also be sent to the following IRS Civil functions via electronic e-mail box (refer to the e-mail box addresses located in the CI form routing section):

- Tax Exempt Government Entities (TEGE),
- Abusive Transactions and Technical Issues (ATTI-LDC),
- Large Business and International (LB&I),
- IRS SB/SE Fraud/BSA.

This form does not replace Form 4135, Criminal Investigation Control Notice, and its separate process. This section only serves to notify the recipient that CI has requested TC 914 controls on applicable subjects/entities under investigation. In efforts to provide notification to the appropriate IRS civil function and receive an accurate and timely response, the SA should answer the specified notification questions in this section of the form.

- (7) When the services of a cooperating revenue agent are necessary, the SAC or the SAC's designee should submit a request to the appropriate operating division Territory Manager where the subject is located (see subsection 9.5.1.2.1.5 regarding administrative joint investigations with a cooperating examiner/officer).
- (8) Investigations should be conducted impartially and thoroughly to obtain all pertinent information and evidence, including any exculpatory evidence.
- (9) If the criminal investigation is conducted jointly with a civil operating division, the special agent should interview the cooperating examiner/officer to obtain all pertinent facts relating to developments preceding the administrative joint investigation, such as statements made by the subject in the presence of the cooperating examiner/officer.
- (10) If the investigation involves an alleged false or fraudulent return or other document, the special agent should obtain a statement under oath from the person who prepared the return or document.
- (11) When the net worth method of proof is used to show an underreporting of income, the subject's filing record and copies of available income tax returns should be obtained for at least five years preceding and all years subsequent to the first year of the violations. In the event any of these returns are not available, and if the amount of income reported cannot be determined from other sources, the operating division Area Director's office should be asked to provide a list of the amounts of income tax paid (including payments of estimated taxes). In such cases, the amount of tax paid should be used to compute the maximum net income that could have appeared on the returns. Prior reports bearing on the matter should also be examined.

9.5.1.2.1.1  
(09-27-2011)  
**Interview with Subjects  
of Investigations**

- (1) The special agent must obtain the original return or returns at issue, if any were filed for the pertinent period, prior to independently interviewing a subject, the subject's representative, one of the subject's present employees or the subject's return preparer, and prior to inspecting the subject's books and records.

- (2) Exceptions to the requirement that original returns, rather than copies, be obtained may be made in investigations where an examination is extended to include taxable periods for which the original return is not available and the examination is based on the subject's retained copy, or where the use of copies is approved in writing by the SAC.
- (3) In most administrative Title 26 or tax-related Title 18 investigations, the subject should be contacted for an initial interview to confront them with the allegations and to identify potential defenses or other weaknesses in the case before making further investigative contacts. Contact with the subject should be made within the first 30 days of numbering a subject criminal investigation. A decision not to contact the subject should be documented in management's investigation review files. The initial interview of the subject may take place at the same time as the initial interview with the return preparer and the accountant.
- (4) All contacts with the subject or the subject's representative must be documented. Special agents should avoid contact with the subject or the subject's representative without a witness for the government, preferably another special agent, present.
- (5) The special agent should monitor developments that could hinder or terminate the prosecution, such as the subject's death or sudden serious illness, their absence from the jurisdiction of the US courts or the contamination of evidence.

9.5.1.2.1.2  
(02-06-2024)  
**Additional Inspection of  
Taxpayers Records**

- (1) Title 26 USC 7605(b) provides that no taxpayer shall be subjected to unnecessary examinations or investigations, and only one inspection of a taxpayer's books of account shall be made for each taxable year, unless the taxpayer requests otherwise or, after investigation, the taxpayer is notified in writing that an additional inspection is necessary. Pursuant to Delegation Order (DO) 4-7 (formerly DO-57, Rev. 9) authority has been delegated to the relevant operating division Territory Managers to sign the notice of additional inspection (Letter 939 (DO)).
- (2) Once signed by the appropriate operating division Territory Manager, the notice of additional inspection should be delivered to the subject of an investigation by the special agent or the cooperating revenue agent or revenue officer at the time the inspection is begun.
- (3) In general, the Service will not reopen any case closed after examination unless information is developed that indicates fraud, malfeasance, collusion, concealment, or misrepresentation of a material fact (see IRM 1.2.1.5.1, Policy Statement 4-3, Cases closed by District Directors or Service Center Directors will not be reopened except under certain circumstances).
- (4) Form 4505, Reopening Memorandum, should be used when requesting authority to reopen a case. Form 4505 is usually prepared by the examiner; however, situations may arise in which a special agent may be a co-initiator. The SAC may be listed in the routing block entitled "Other" on Form 4505. The special agent and the cooperating examiner/officer should jointly prepare one Form 886-A, Explanation of Items, to provide a narrative justification for the request.

- (5) Title 26 USC 4423 specifically excludes wagering tax investigations from the provisions of 26 USC 7605(b). It provides that the books of account of any person liable for taxes on wagering may be examined and inspected as frequently as necessary for the enforcement of the wagering tax provisions.

9.5.1.2.1.3  
(02-26-2025)

#### Requesting Returns

- (1) This section lists the steps necessary to request tax returns. This is an overview only; detailed guidance for each of these steps can be found at:
  - a. *Communities Accessing and Sharing Information (CASE) SharePoint site.*
  - b. *Servicewide Electronic Research Program (SERP).*
  - c. IRM 2.9, Integrated Data Retrieval System (IDRS) Procedures; IRM 2.3, IDRS Terminal Responses; and IRM 2.4, IDRS Terminal Input.

9.5.1.2.1.3.1  
(02-06-2024)

#### Identify the Document Locator Number

- (1) The first step in requesting tax returns is to identify the document locator number for the tax returns needed. To do this, use IDRS Command Code IMFOLT (for SSN's) or BMFOLT (for EIN's) to get the Document Locator Number (DLN) of the tax return. The controlling DLN will be shown on the second line of information on both of these command codes. A Footprints ticket request with "Certify Tax Authorization" box checked must be submitted and approved prior to accessing IDRS.
- (2) If an adjustment has been made to the original tax return (TC 150), the controlling DLN will be different from the TC 150 DLN. This pertains to both paper returns, as well as electronically filed (ELF) returns. Compare the controlling DLN with the TC 150 DLN. If the two are different, request both DLN's. In instances where multiple adjustments are made and/or amended returns are filed, more than two DLNs may need to be requested.

9.5.1.2.1.3.2  
(02-06-2024)

#### Determining if Tax Return was Filed Paper/Electronically

- (1) The File Location Code (FLC), which is the first two digits of the DLN, will identify whether a tax return is a paper return or an electronically filed return, as well as which IRS Campus is responsible for handling the return.
- (2) A listing of all FLCs can be found on CASE in the IA/TFIA Community. For each FLC, the corresponding IRS Campus is identified and it is noted whether the return is paper or electronic.

9.5.1.2.1.3.3  
(02-06-2024)

#### Requesting Paper Tax Returns

- (1) A Footprints ticket request with "Certify Tax Authorization" box checked must be submitted and approved prior to requesting all tax returns. All paper tax returns are requested using IDRS Command Code **ESTABDE**. Please see the above referenced material for detailed guidance on using command code **ESTABDE**.

9.5.1.2.1.3.4  
(02-06-2024)

#### Requesting Electronically Filed Tax Returns

- (1) The Footprints ticket must be approved prior to requesting all tax returns.
- (2) Electronically filed returns for Processing Year 2009 and after may be filed in Modernized e-File System (MeF). The Modernized Tax Return Database (MTRDB) is the official repository of all electronic returns processed through MeF. Tax return data is stored immediately after returns are processed. IRS employees use the Employee User Portal (EUP) to access and view MeF tax returns/extensions, acknowledgements, transmissions and tax return related information processed through MeF. This application uses a web browser and allows IRS employees to view and print tax returns in a format that resembles the paper forms. The EUP gives the ability to view and print returns immedi-



ately, which means the return does not have to be ordered via IDRS. The MeF filed documents printed from EUP are considered original for all purposes except the Tax Return Inventory (TRI) program, where they are treated the same as **TRPRT** documents.

- (3) Not all 2009 and subsequently filed electronic returns will be filed MeF. Some of them will still be filed via the ELF "Legacy" system as in the past. As more and more providers/preparers convert to the MeF method the number of MeF filed tax returns will rise, until the ELF "Legacy" system is phased out. IDRS Command Code TRDBV is the easiest place to look and find an indication of whether a return is filed MeF or ELF "Legacy". Please see the above referenced material for detailed guidance on using command code **TRDBV**.
- (4) All non-MeF ELF "Legacy" tax returns are ordered via IDRS command code **TRPRT**, regardless of the processing year. These documents are sent to the requestor via the Control-D database. Please see the above referenced material for detailed guidance on using command code **TRPRT**.
- (5) Detailed procedures and training for obtaining electronic returns through EUP can be found on CASE in the IA/TFIA Community, and the Integrated Talent Management (ITM) Course #29749 – Modernized e-File Return Request and Display (RDD).

9.5.1.2.1.3.5  
(09-27-2011)  
**Requesting Images of  
Forms 1040X**

- (1) Form 1040X, Amended U.S. Individual Income Tax Return, are converted to a scanned image before they are destroyed. The scanned images of the Forms 1040X (known as the correspondence imaging system (CIS) prints) can be retrieved using IDRS command code ESTABDX. The "CIS Print" must be notated in the remarks section.

9.5.1.2.1.3.6  
(09-27-2011)  
**Locating Missing Tax  
Returns (Special  
Searches)**

- (1) To locate missing tax returns, employees should contact the Special Search Unit at the IRS Campus where the tax return was filed.
- (2) A list of the campus special search unit contacts can be found on CASE in the IA/TFIA Community.
- (3) To identify the appropriate IRS Campus to contact, please review the table found on CASE in the IA/TFIA Community. This reference will also identify whether the return is paper or electronic.
- (4) Before asking for a special search, employees will need to have made at least two requests through normal ESTABD procedures - allowing two weeks between requests for mail time. If the tax return has not been received after both requests and the allotted mail time, a special search can be requested.
- (5) A Form 2275, Records Request, Charge and Recharge, with all of the pertinent information will be required. A manager must sign this form before the special search unit will service your special search request.

9.5.1.2.1.3.7  
(02-06-2024)  
**Requesting Expedite Tax  
Returns for Interview or  
Court Proceedings**

- (1) Employees requesting expedite tax returns should complete Form 2275, Records Request, Charge and Recharge, and route through the servicing CI Scheme Development Center Court Witness Coordinator.

- (2) Instructions on how to request a Court Witness for trial or obtain certified tax records for trial can be found on *Court Witness Program Support SharePoint site*.
- 9.5.1.2.1.4  
(02-26-2025)  
**Requesting Transcripts of Taxpayer Accounts**
- (1) If return information is needed, but original tax returns are not required, the IDRS should be used to request return information in the form of transcripts. Transcripts are accessed using IDRS command codes that allow the information be viewed on-line or printed. A Footprints ticket request with “Certify Tax Authorization” box checked must be submitted and approved prior to requesting all transcripts.
- (2) If a certified transcript is required, a Court Witness Request Memo should be routed through the Court Witness Coordinator, who will work with the SA in securing the records. Form 4338, Information or Certified Transcript Request, will be used by CI personnel to request certified transcripts of account. Additional information and instructions can be found on *Court Witness Program Support SharePoint site*.
- (3) Detailed guidance for requesting transcripts can be found on:
- Communities Accessing and Sharing Information (CASE) SharePoint site*.
  - Servicewide Electronic Research Program (SERP)*.
  - IRM 2.9, Integrated Data Retrieval System Procedures IDRS; IRM 2.3, IDRS Terminal Responses; and IRM 2.4, IDRS Terminal Input.
- 9.5.1.2.1.5  
(02-06-2024)  
**Administrative Joint Investigations with SB/SE, LB&I, TE/GE, or TS**
- (1) An administrative joint investigation is one conducted by CI together with SB/SE, LB&I, TE/GE, or TS investigations involving alleged tax evasion, willful failure to file a return and willful failure to pay a tax are usually investigated jointly with a civil operating division (see IRM 25.1.4, Fraud Handbook, Administrative Joint Investigation).
- (2) Use Form 6544, Request for Cooperating Examiner, to request a cooperating officer in administrative joint investigations.
- (3) In an administrative joint investigation, the SA’s main responsibility is to gather evidence to prove criminal violation(s). The SA is responsible for:
- Advising the “non-custodial rights” as it relates to jointly conducted interview of the subject during the course of an investigation.
  - Obtaining testimony of witnesses.
  - Conducting necessary surveillance and undercover work.
  - Executing arrests.
  - Planning, scheduling, and prioritizing investigative actions.
  - Developing and documenting evidence of criminal intent.
  - Preparing and issuing summonses.
  - Determining the appropriate method for computing tax for criminal purposes.
  - Computing the criminal tax liability.
  - Obtaining original tax returns for all open periods and entities under investigation.
  - Making copies of the original returns, certifying they are correct, and providing them to the cooperating examiner/officer within 30 days after initiating an administrative joint investigation or receiving the original returns, whichever is later. CI will retain all original tax returns as evidence.



- I. Establishing appropriate controls on tax returns (see LEM 9.14.4 in CI Virtual Library).
- (4) In an administration joint investigation, the cooperating examiner/revenue officer is responsible for the examination and collection aspects of the joint investigation and for taking any necessary actions to protect the government's interests with respect to the statutory period of assessment (See IRM 25.1.4.4.1, Conduct of the Cooperating Compliance Employee).
- (5) The Supervisory Special Agent (SSA) and the Civil Business Operating Division (BOD) manager of the cooperating agent should exercise sufficient control and follow-up to ensure the prompt completion of the investigation. The SSA initiates the four-way conference, however, this does not limit the Civil Business Operating Division managers from requesting a four-way conference at the required time. Mandatory quarterly conferences (four-way) must be conducted for all joint criminal investigations. Four-way conferences are also required for all accepted criminal referrals (administrative and grand jury) in which a compliance employee is not asked to participate (non-joint investigations). In this scenario, the mandatory four-way conferences are designed to inform the referring Civil BOD's function of the investigation's status at significant milestones. A significant milestone would include examples of the following: the SA writing the SAR, discontinuing the case, the case being forwarded to the Department of Justice (DOJ) for prosecution recommendation, referred to the US Attorney's Office (USAO), case is going to trial, etc. Joint quarterly four-way meetings must be conducted for both administrative and grand jury investigations, unless waived by both operating divisions. Form 6084, Quarterly Joint Workplan and Conference Memorandum, must be completed to document the meetings. At the meetings, the participants should review the status of the investigation and determine which actions should be taken by the cooperating agent and the SA during the next quarter. The four-way conference must be attended by the SSA, SA, the Civil BOD's group manager and the cooperating agent. The Fraud Technical Advisor (FTA) may also attend, when necessary.
- (6) If CI learns of an investigation within another operating division that is related to an active criminal investigation, CI must inform the appropriate operating division Territory Manager so that the related investigations may be coordinated to prevent actions that could prejudice the criminal investigation.
- (7) Area Counsel, Criminal Tax (CT) is responsible for reviewing any proposed civil actions in an administrative joint investigation. Criminal Tax should discuss the proposed civil action with the appropriate operating division's counsel.
- (8) If the SAC believes a proposed civil action might imperil the criminal investigation, the SAC should notify the appropriate operating division Territory Manager. If the Territory Manager disagrees, they may ask the SAC to reconsider and may seek further review by the Area Director of the appropriate operating division and the Director, Field Operations. If the parties fail to reach an agreement, the matter should be referred by the SAC to the Chief, CI. The Chief, CI, will consult with their counterpart in the other operating divisions and make a recommendation as to the proposed civil action.
- (9) If the special agent believes an administrative joint investigation should be expanded to include a return that was filed six or more years ago, they should

submit a brief statement of the reasons for this expansion to the SAC, who will decide whether to expand the investigation.

- (10) Policy Statement 4-26 (formally P-4-84) requires balancing the civil and criminal aspects of investigations to maximize civil enforcement without imperiling the criminal prosecution (see IRM 1.2.1.5, Policy Statements for the Examining Process). If it is determined that the civil statute will be allowed to expire in order to protect the criminal investigation, the special agent and the cooperating examiner/officer should prepare a Form 10498-B, Joint Investigations Intent to Solicit Consent to Extend Statute, with signatures of the TM or equivalent and the SAC. This memorandum must be signed by the investigating agent, the SSA, the cooperating examiner/officer and their manager and the Territory Manager, and then forwarded to the SAC. The proposal to allow the civil statute to expire should also be reviewed by Area Counsel, CT. The Administrative Joint Investigation manual and IRM 25.1.4.4.8, Prior and Subsequent Years and Related Returns, contains additional information regarding the protection of civil statutes of limitations during a criminal investigation.

9.5.1.2.1.5.1  
(09-27-2011)  
**Civil Action on  
Investigations Under  
Jurisdiction of the Tax  
Division**

- (1) In the transmittal memorandum forwarding a prosecution recommendation report to the DOJ, Tax Division, the SAC should describe any civil matters that are pending. The memorandum should summarize the outstanding liabilities of the taxpayer and related entities and modules. In addition, the memorandum should indicate any civil actions taken with respect to outstanding liabilities as well as any future action planned by other operating divisions.
- (2) The transmittal memorandum can be updated at any time while the investigation is under the DOJ's jurisdiction.

9.5.1.2.1.5.1.1  
(02-06-2024)  
**Requests for Statute  
Extensions and  
Statutory Notices of  
Deficiency**

- (1) In some cases, the special agent may decide that a request for the subject's consent to extend the civil statute of limitations is warranted. Such a request must be approved by the SSA and the SAC, and it should be made by the special agent who has actual custody of the return.
- (2) In administration joint investigations, the cooperating examiner/officer should timely advise CI of any proposal to solicit consents to extend the statutory period for assessment. Unless CI requests otherwise, the cooperating examiner/officer should attempt to obtain the consent within 10 workdays following notification of CI. If the SAC and the operating division Territory Manager cannot reach an agreement with respect to the request for consent, the Director, Field Operations and the Area Director of the appropriate operating division will decide whether the consent should be solicited. If agreement is still not achieved, the matter should be elevated to the operating division commissioner level and to the Chief, CI, for resolution.
- (3) If issuance of a statutory notice of deficiency would imperil the success of a criminal investigation or prosecution, a statutory notice will generally not be issued.

**Note:** If a statutory notice is issued and the taxpayer petitions the US Tax Court, the government may be required to reveal evidence to the taxpayer, either in its answers to the taxpayer's motions or at the civil trial, prior to the conclusion of the criminal investigation.

- (4) If the operating division Territory Manager and the SAC authorize the operating division to issue a statutory notice in a pending criminal investigation, the authorization should provide that collection activity be suspended following the assessment of the deficiency and issuance of the first notice. If the account is not paid after the first notice, the Taxpayer Delinquent Account (TDA) will be issued but will be held by the office branch in inactive status until the tax is paid or CI notifies the operating division to proceed with collection activity.

9.5.1.2.1.6  
(09-27-2011)  
**Disclosure of Return  
Information to  
Taxpayer's  
Representative**

- (1) In general, 26 USC 6103 provides that returns and return information are confidential and may not be disclosed to any person by an officer or employee of the United States unless a statutory exception applies.
- (2) Disclosure of returns and return information to a taxpayer's representative may be made only in the following circumstances:
  - a. The taxpayer has executed a written consent to the disclosure (Form 8821, Tax Information Authorization, may be used for this purpose); or
  - b. The taxpayer has provided the representative with a power of attorney. (Form 2848, Power of Attorney, may be used for this purpose).

9.5.1.2.1.7  
(09-27-2011)  
**Tax Information  
Authorization**

- (1) A tax information authorization is a document signed by a taxpayer authorizing any individual or entity designated by the taxpayer to receive and/or inspect confidential tax information in a specified matter. A tax information authorization is not required if a power of attorney is properly filed, provided the power of attorney places no limitations upon disclosures.
- (2) The tax information authorization may be executed on Form 8821, Tax Information Authorization, or on a substitute form that includes all the information requested on Form 8821. The requirements for filing a tax information authorization are described in Subpart E, Conference and Practice Requirements (26 CFR 601.501 – 601.509).

9.5.1.3  
(09-27-2011)  
**Power of Attorney (POA)**

- (1) A POA is a document signed by a taxpayer appointing an individual as attorney-in-fact to perform certain specified acts or types of acts on the taxpayer's behalf. The taxpayer's appointed representative may be an attorney, a CPA, an enrolled agent, an enrolled actuary or another individual described in 26 CFR 601.502(b).
- (2) The requirements for filing a POA are outlined in Subpart E, Conference and Practice Requirements (26 CFR 601.501 – 601.509). The taxpayer's representative may submit Form 2848, Power of Attorney and Declaration of Representative, or a substitute form that meets the specifications of 26 CFR 601.503(a). However, for purposes of processing the form onto the Centralized Authorization File (see below), a completed Form 2848 must be attached, even if not signed by the taxpayer.
- (3) With certain exceptions set forth in 26 CFR 601.504(b), a power of attorney is required in order for the taxpayer's representative to perform any of the acts described in 26 CFR 601.504(a). These specific acts can also be found on the front page of Form 2848. In all other instances involving the receipt of confidential tax information, Form 8821, or an appropriate substitute, may be used instead of Form 2848.

- (4) A document used in place of Form 2848 must contain the following information:
  - a. Name, taxpayer identification number (TIN), and address of the taxpayer(s).
  - b. Name(s) and address(es) of representative(s) authorized by the taxpayer(s).
  - c. Description of the matter(s) for which representation is authorized, including type(s) of tax, federal tax form number(s) and the tax year(s) or period(s).
  - d. A clear expression of the taxpayer's intent concerning the scope of authority granted to the representative.
  - e. Taxpayer(s) signature(s) and the date.
  - f. A written declaration from the representative stating that they are not currently under suspension or disbarment from practice before the IRS or any other practice of their profession, is aware of the regulations contained in Treasury Department Circular 230, is authorized to represent the taxpayer, and is a "recognized representative" under 26 CFR 601.502(b). For limitations on the acts which an unenrolled return preparer may perform, see 26 CFR 601.502(b)(5)(iii).
- (5) If a power of attorney is granted to a person other than an attorney, CPA, or enrolled agent, Revenue Procedure 81-38, C.B. 1981-2, prohibits such person from performing the following acts:
  - a. Executing claims for refund.
  - b. Receiving checks in payment of any refund of Internal Revenue taxes, penalties, or interest.
  - c. Executing consents to extend the statutory period for assessment or collection of a tax.
  - d. Executing closing agreements with respect to a tax liability or specific matter.
  - e. Executing waivers of restriction on assessment or collection of a deficiency in tax.
- (6) Information concerning a taxpayer should not be released to a third party without written authorization from the taxpayer. If questions arise as to the propriety of disclosing information to a person representing the taxpayer, the disclosure office should be contacted for guidance.

9.5.1.3.1  
(02-26-2025)

**Processing Power of  
Attorney (POA) Forms**

- (1) Upon receipt, the original of any power of attorney should be associated with the investigative file.
- (2) A copy of the POA should be forwarded to the attention of the Power of Attorney Unit at the Memphis or Ogden IRS Campus for data entry into the Centralized Authorization File (CAF). The copy forwarded should be legible and complete to ensure data entry can be accomplished. Indicate on this copy the first initial and surname of the investigating agent, the function/division that received the power of attorney and the field office where received.

**Note:** Third party authorizations submitted on behalf of taxpayers residing abroad (international) are processed by the Philadelphia Accounts Management Center (PAMC) exclusively.

- Ogden Accounts Management Center (OAMC)  
1973 N. Rulon White Blvd.  
M/S 6737, Ogden, UT, 84204  
Fax: 855-214-7522
  - Memphis Accounts Management Center (MAMC)  
5333 Getwell Rd  
Stop 8423, Memphis, TN, 38118  
Fax: 855-214-7519
  - Philadelphia Accounts Management Center (PAMC)  
International CAF M/S 4.H14.123  
2970 Market Street  
Philadelphia, PA, 19104  
Fax: 855-772-3156  
Fax: 304-707-9785 Outside of the United States (U.S.)
- (3) Requests for copies of POA forms, including all subsequently filed instruments such as revocations, substitutions, etc., should be by memorandum addressed to the appropriate IRS campus (see Exhibit 9.5.1-1).
- (4) This procedure should be followed unless the POA forms are clearly intended for one-time use, such as those submitted with Freedom of Information Act (FOIA) requests or Congressional inquiries. In these instances, no copy should be forwarded to the IRS campus and the original should be associated with the correspondence.
- (5) Regulations require submission of sufficient copies of authorizations from representatives for each tax matter involved. (For a description of the information that must be included with respect to each tax matter, see 26 CFR 601.503(a)(5).) Each return for a taxable period represents a separate tax matter. However, an attorney or certified public accountant is required to file only one declaration for a particular party represented, regardless of the number of tax matters involved. Therefore, it may be necessary to make copies of authorizations.

9.5.1.3.2  
(09-27-2011)  
**Representation by  
Governmental Officers  
and Employees**

- (1) Treasury Department Circular No. 230 prohibits current officers and employees of the executive, legislative, or judicial branches of the Federal government, or of the District of Columbia, from practicing before the IRS, except that such officers or employees may represent their parents, spouses or children, or any other persons for whom, or estates for which, they serve as guardians, executors, administrators, trustees or other personal fiduciaries, in matters in which they have not participated as government employees and for which they have had no official responsibility (see 18 USC 203 and 205).
- (2) Depending on the extent to which former government employees were involved with a matter while in government service, they may be barred for one year, two years, or for life from representing any party to that matter.
- (3) Partners and associates of former government employees may also be affected by this prohibition.

- (4) No member of Congress or Resident Commissioner (elect or serving) may practice before the IRS in connection with any matter for compensation of any kind.
- (5) Officers or employees of any state, or subdivision thereof, whose duties require them to pass upon, investigate, or deal with tax matters of such state or subdivision, may not practice before the IRS if such employment may disclose facts or information applicable to Federal tax matters.
- (6) Federal or state officials or employees may discuss an investigation or appear with a taxpayer in the capacity of a witness without violating these restrictions. However, if a Federal or state official or employee appears to be representing a taxpayer under circumstances indicating a possible violation of Circular No. 230, the official or employee should be advised of the existence and content of Circular No. 230.

## 9.5.1.3.3

(07-30-2024)

**Dealing with Powers of Attorney (POA)**

- (1) Title 26 USC 7521(c) generally provides that the IRS may not require a taxpayer to accompany their representative to an interview, if the taxpayer has executed a valid power of attorney. However, 26 USC 7521(d) provides that this rule does not apply to criminal investigations.
- (2) In certain cases, CI may determine that honoring a POA would delay or hinder an investigation. For example, a special agent may have been unable to contact a representative despite numerous attempts. In such instances, the special agent may request permission from the SSA, to notify the subject directly that the agent believes the representative is responsible for unreasonable delay or hindrance of the investigation (see 26 USC 7521(c)). If the SSA grants permission, the investigative file should contain documentation reflecting the fact that permission was given and the facts that led to this decision.
- (3) Even if the subject is notified directly that the agent believes the representative is hindering the investigation, the IRS must continue to notify the representative of any proposed future contacts with the taxpayer, provide the representative with copies of notices, etc., and/or recognize the representative if the representative makes an appearance.
- (4) Whenever correspondence is received from a taxpayer or representative in a tax investigation, and the reply or a copy thereof cannot be directed to the representative as requested because the above-described Conference and Practice Requirements have not been satisfied, the reply should be directed to the taxpayer, and the representative should be advised.
- (5) If the IRS has received a valid power of attorney or other appropriate authorization requesting that taxpayer correspondence related to a particular CI matter be addressed or directed to a designated attorney or CPA representing the taxpayer, the following guidelines should be followed:
  - a. Except as provided in (b) below, the correspondence should be addressed or directed to the authorized representative. A copy of the correspondence should also be furnished to the taxpayer, unless the taxpayer has specifically requested in writing that no copy be furnished.
  - b. If a particular notice or other document is required by statute or regulation to be furnished directly to the taxpayer, the original should be directed to the taxpayer and a copy should be furnished to the authorized representative.



9.5.1.4  
(02-06-2024)

**Centralized  
Authorization File (CAF)**

- (1) CAF is a centralized database containing detailed information on third parties authorized to act on behalf of a taxpayer (see IRM 21.3.7, Taxpayer Contacts, Processing Third-Party Authorizations onto the Centralized Authorization File (CAF)).
- (2) The CAF contains:
  - a. Taxpayer name, Taxpayer Identification Number (TIN), name control and signature date (taxpayer address and phone information are not processed onto the CAF).
  - b. Third party name, address, telephone number, fax number, name control, CAF number and status information.
  - c. A summary of the types of tax and tax period(s) and authority granted by taxpayer(s) to the representative(s) for each period authorization type (e.g. Form 2848, Form 8821, Form 706, etc), and representation designation level(s) (e.g. A- Attorney, B- Certified Public Accountant (CPA), etc).
- (3) The CAF number is a unique number assigned to each third party. The third party is expect to use it whenever they represent or act on behalf of a client or requests oral or written tax information.
- (4) The CAF information is a particularly useful tool in investigations where routine investigative sources have not been successful in identifying former and current clients of a return preparer(s).
- (5) CAF Information Requests are used to determine and list the clients of the subject of a criminal investigation. A CAF Information Request differs from the IDRS command code CFINK, which researches particular tax returns or taxpayers on which a third party has been listed as a power of attorney or an authorized representative, and who has been issued a CAF number. A CFINK request can be run through IDRS if the operator has access to the command code. Consult IRM 2.3.31, IDRS Terminal Responses, Command Codes CFINK , RPINK, KAFFQ and KAFTQ for CAF Inquiry, for instructions on the use of command Code CFINK.

9.5.1.4.1  
(07-30-2024)

**Criminal Investigation  
Access to CAF**

- (1) Delegation Order No. 25-14 gives the Chief, CI the authority to approve CI access to CAF information not available on IDRS, including the CAF 77 report, in connection with a criminal investigation (see IRM 1.2.2.15(14), Delegation Order 25-14, Centralized Authorization File Access).

9.5.1.4.2  
(02-06-2024)

**The CAF Information  
Request**

- (1) A CAF Information Request is made by the SAC in a memorandum to the Chief, CI. The subject line will read "Centralized Authorization File Information Request".
- (2) The CAF Information Request memorandum (see "Memo CAF Request" template in Unified Checklist SharePoint site under CI Connections) must contain the following information:
  - a. Investigation number.
  - b. Summary of the investigative actions taken to date.
  - c. Tax periods for which information is requested.
  - d. CAF number.
  - e. Explanation of why access to CAF information is necessary.

**Note:** The explanation must indicate that the information is not available from other sources.

- f. Concurrence line for the Director, Field Operations.
- g. Approval line for the Chief, CI.

9.5.1.4.3  
(02-06-2024)  
**Approval and  
Processing of CAF  
Information Requests**

- (1) All CAF requests are forwarded to the Chief, CI for approval through the Director, Field Operations to the Director, FC, (SE:CI:GO:FC), who will review the document for content and prepare appropriate routing documents to obtain approval from the Chief, CI.
- (2) Following approval of the CAF Information Request, the Director, FC will submit the request directly to the Chief, IDRS Branch for research. The Director, FC will maintain all CAF Information Requests on behalf of the Chief, CI and will periodically review the usefulness of such requests.
- (3) The Director, FC will also forward a copy of the approved CAF Information Request to the SAC. A copy of the request will be maintained in the corresponding group's administrative case file.

9.5.1.5  
(07-30-2024)  
**Parallel Investigations**

- (1) The Internal Revenue Code (IRC) has both civil and criminal provisions to address abusive tax schemes. In certain situations, the IRS will suspend a civil investigation until the related criminal investigation is completed, in order to avoid jeopardizing the success of the criminal case. However, criminal and civil investigations may be conducted simultaneously with respect to ongoing, abusive tax schemes that result in significant losses to the US Treasury. This manual section provides special agents with guidance with respect to CI's involvement and obligations when conducting a parallel investigation. IRM 4.32.2, Abusive Transactions, The Abusive Transactions (AT) Process, should also be consulted for detailed descriptions of the policies and procedures of both CI and the civil operating divisions with respect to parallel investigations.

9.5.1.5.1  
(02-06-2024)  
**Policy Statement**

- (1) Policy Statement P-4-26 provides policy guidance with respect to the impact of a civil compliance action during a criminal investigation (see IRM 1.2.1.5.11, Policy Statement 4-26 (Formerly P-4-84), Criminal and civil aspects in enforcement).

9.5.1.5.2  
(02-06-2024)  
**Commencement of  
Parallel Investigation**

- (1) Criminal Investigation must be notified of all proposed investigations prior to authorization by the SB/SE LDC or the LB&I Office of Tax Shelter Analysis (OTSA). Criminal Investigation should respond by indicating whether the commencement of a civil investigation would likely conflict with the criminal investigation.
- (2) If CI has an open subject criminal investigation or related investigation or is interested in initiating a criminal investigation, civil examiners and special agents must meet and coordinate the gathering of evidence to support the separate criminal and civil investigations while being mindful of legal requirements and constraints. **Communication is essential for a successful parallel investigation.**



- 9.5.1.5.3  
(09-27-2011)  
**Criminal Investigation of an Abusive Scheme or Abusive Preparer**
- (1) Criminal Investigation field offices may request a civil audit or investigation with the goal of terminating an abusive tax scheme or curtailing the actions of an abusive return preparer. A civil audit or investigation may result in a civil court injunction, a civil penalty or both.
  - (2) Requests for civil investigations of abusive schemes or preparers should generally be routed to the SB/SE LDC. The SB/SE website provides contact information for initiating a parallel investigation of an abusive tax scheme.
  - (3) The LB&I OTSA should be contacted with respect to abusive schemes promoted or fraudulent returns prepared by national law firms or accounting firms. The CI Philadelphia LDC can assist with locating the current LB&I OTSA contact person to request a promoter or preparer investigation from OTSA.
- 9.5.1.5.3.1  
(02-06-2024)  
**Role of the Criminal Investigation Financial Crimes Section**
- (1) CI, FC is responsible for the initial coordination with SB/SE and LB&I of potential parallel investigations.
  - (2) When CI FC receives notification of a proposed civil investigation from the SB/SE LDC or OTSA, CI FC conducts research in the Criminal Investigation Management Information System (CIMIS) to determine whether there is an open subject or related criminal examination. This preliminary research involves a search by name and taxpayer identification number, associate identity or “doing business as” (DBA) for any numbered CI investigations.
  - (3) If no CI activity is found in CIMIS, CI FC will forward the proposed civil investigations to the RFIS for review.
  - (4) If CI FC determines there is an open subject criminal investigation or related examination, a memorandum will be sent to the SAC or designated representative of the respective field office requesting a determination as to whether there is a conflict between the proposed civil action and the criminal investigation. A conflict exists if a civil investigation would greatly harm the ongoing criminal investigation. If there is a “no conflict” determination, a parallel investigation may be pursued.
- 9.5.1.5.3.2  
(02-06-2024)  
**Criminal Investigation Field Office Actions**
- (1) The SAC or designated representative should make the conflict/no conflict determination within 10 days of receiving the CI FC memorandum and should return the determination to the SB/SE LDC or OTSA and CI FC.
- 9.5.1.5.3.2.1  
(02-06-2024)  
**Six-Way Conference**
- (1) A six-way conference is required for all investigations where CI has an open investigation or is interested in pursuing an investigation. The conference should be held within 20 days after assignment of the investigation to an examiner.
- 9.5.1.5.3.2.2  
(02-06-2024)  
**Conference Participants**
- (1) The following individuals should participate in the six-way conference:
    - a. Examiner.
    - b. Group/Team Manager.
    - c. Area Counsel.
    - d. Special Agent.
    - e. Supervisory Special Agent.
    - f. Criminal Tax (CT) Counsel.

- (2) If there is a DOJ Attorney (AUSA and/or DOJ-Tax) assigned to the criminal investigation, the DOJ-Attorney should participate. If the DOJ-Attorney cannot participate, it is imperative that they are fully apprised of the nature of the discussion and decisions made with respect to the coordination of the civil and criminal investigations.
- (3) The local Fraud Enforcement Advisor (FEA) is encouraged to attend. Territory Managers, a representative from collections, and the SB/SE LDC Technical Advisor or the Intermediary Transaction (IMT) Technical Advisor may also participate as appropriate.

9.5.1.5.3.2.3  
(09-27-2011)  
**Discussion Topics  
During Six-Way  
Conference**

- (1) The goal of a parallel investigation is to ensure the IRS effectively balances civil and criminal actions to achieve maximum compliance and stop the promotion of the abusive tax scheme.
- (2) The existence of a criminal investigation alone does not present a conflict and should not automatically delay or forestall a civil investigation.
- (3) During the meeting, each operating division should share all non-grand jury information about the abusive scheme. The discussion should include:
  - a. Identification of the subject(s) or entities of the investigations.
  - b. Types of evidence available and the source of such evidence.
  - c. Information known with respect to participant.
  - d. Tax theories or positions of each respective investigation.
  - e. Any limitations on sharing information between divisions such as Rule 6(e) regarding grand jury secrecy.
  - f. Potential impact of possible civil defense discovery motions during the criminal investigation.
  - g. Effect of the disclosure requirements of Brady and Giglio, which apply to civil examiners involved with the injunction process.
- (4) The following factors are considered in determining whether or when the IRS should proceed with a parallel investigation:
  - a. Scope and size of the promotion in terms of potential loss of tax revenue, geographic location, number of promoters, participants or returns involved.
  - b. Rate of growth and extent of marketing, particularly for internet problems.
  - c. Potential for civil injunction.
  - d. Deterrence value of civil versus criminal action.
  - e. Potential impact on criminal investigation.
  - f. Efficient and effective use of resources.
  - g. Amount of time to complete the civil or criminal investigations.
  - h. Ongoing or planned undercover operations or search warrants.
  - i. Identification, potential examination, and deterrence of promotion participant.
- (5) At the conclusion of the six-way conference, determinations should be made with respect to:
  - a. Concurrence on commitment of a parallel investigation.
  - b. Any proposed restrictions as to the extent or timing of the civil investigation.
  - c. Contacts with investigation subjects and witnesses.
  - d. Compliance actions with respect to identification participants.

- e. Sharing of all non-grand jury materials.

9.5.1.5.3.2.4  
(09-27-2011)  
**Outcome of Six-Way  
Conference**

- (1) The six-way conference may result in several different outcomes:
  - a. Conduct a parallel investigation.
  - b. Temporary delay any overt steps of the civil investigation (e.g., do not contact the promoter or third parties).
  - c. Commence only a civil investigation.
  - d. Proceed with only a criminal investigation.

9.5.1.5.3.2.4.1  
(09-27-2011)  
**Delay of Civil Action**

- (1) Delay of overt civil action should only occur in investigations where CI can show that civil enforcement would seriously harm or impair the criminal investigation.
- (2) Suspension of overt civil action should be limited to a short time frame to allow CI to complete a specific task (i.e., undercover activity or search warrant).
- (3) Field compliance and CI should agree on extensions of time beyond the originally agreed-upon time frame.
- (4) Criminal Investigation should allow civil examiners to continue to develop their investigation to the extent possible without taking any overt actions. Acceptable actions may include conducting internal and public information research, reviewing non-grand jury records in CI's possession, and securing or developing a participant list.
- (5) Compliance actions with respect to abusive tax scheme participants who are not subjects or potential subjects of a criminal investigation should generally not be delayed.

9.5.1.5.3.2.4.2  
(02-06-2024)  
**Resolving Conflicts**

- (1) Concerns about, or objections to, parallel investigations should be resolved through consultation among the civil examiners, special agents, the examiners and special agents' supervisors, IRS attorneys, and, if a prosecution referral has been made, attorneys at the DOJ and/or USAO. If resolution is not possible at this level, the matter should be elevated through the respective chains of command of CI and the civil operating division, and, if the matter has been referred, through the DOJ/USAO chain of command.
- (2) If there is a dispute arising from a parallel investigation, the CI field office should notify the CI FC senior analyst responsible for parallel investigations. CI FC will provide guidance and will work with the field office to resolve the conflict.
- (3) Separate memoranda should be prepared for the appropriate Territory Manager and the SAC. The briefing document should summarize the facts of the investigation, projected plan of action, and specific civil actions identified as problematic to the parallel investigation. The existence of a criminal investigation alone is not a sufficient basis for delaying a civil promoter investigation. Rather, CI should describe how the criminal investigation would be hindered if a civil investigation were begun.
- (4) If necessary, the matter should be elevated as follows:

- a. The Territory Manager and the SAC should meet to discuss resolving any civil or criminal conflicts.
- b. If the Territory Manager and the SAC are unable to reach an agreement, the Territory Manager should submit a memorandum within 10 days to the SB/SE LDC or the Financial Services Promoter Manager describing the nature of the conflict and the reasons why CI believes civil action would harm the criminal investigation. The SB/SE LDC or LB&I promoter program should work with CI FC and their respective operating division counsels to assist in resolution of the dispute.
- c. If an agreement is still not reached, the local SB/SE Examination Area Director or LB&I Director should attempt to resolve the issue with the CI Director, Field Operations.
- d. The next elevation level involves the SB/SE Director, Abusive Transactions, or the LB&I Industry Director/Issue Champion and Director, CI FC.
- e. The Deputy Commissioner, Services and Enforcement, has final authority for determining the appropriate course of action.

9.5.1.5.4  
(09-27-2011)

**Quarterly Coordination Meetings**

- (1) Civil examiners, SAs and their respective Area Counsels must continually coordinate their efforts. Investigation status meetings are required to be held, at a minimum, every quarter until the civil proceedings are complete or the civil investigation is placed in fraud suspense.
- (2) The purpose of the quarterly coordination meetings is to communicate investigation developments and facilitate information sharing between the civil and criminal divisions. Criminal Investigation may not direct the actions taken with respect to the civil investigation.
- (3) Participants in the meetings should include the examiner, special agent, their respective managers and their respective Area Counsels. If the matter has been referred to the DOJ, the assigned attorney should participate in these investigation status meetings. It is critical that the DOJ attorney assigned to the criminal investigation be fully aware of all civil actions, developments and evidence throughout the investigative process.
- (4) If CI plans to use special investigative techniques, such as undercover operations, or to execute a search warrant, the civil operating division should be notified when practical. The timing of actions in a civil examination, investigation or other proceeding may affect special agent safety during the use of a special investigative technique or the execution of a search warrant. Therefore, close coordination and communication are necessary when CI uses such techniques. Any decisions on how and when to proceed should be weighed in favor of special agent safety concerns.
- (5) Any concerns or objections raised during the investigation process should be resolved by consultation among the civil examiners and special agents, their respective supervisors and their respective Area Counsel. When the matter has been referred, the DOJ Attorney must be included in the decision-making process.

9.5.1.5.4.1  
(09-27-2011)

**Coordination of Theory of the Case**

- (1) Civil examiners, special agents and their respective counsel should carefully consider whether any tax theories or positions taken in their respective investigations (civil injunction, participant examination, and criminal prosecution) are inconsistent.

9.5.1.5.5  
(09-27-2011)  
**Coordination of  
Interviews**

- (1) The civil examiner must advise the special agent assigned to the parallel investigation prior to contacting the promoter or witnesses.
- (2) Generally, the special agent should inform promoters of their Fifth Amendment rights before the civil examiner initiates contact or conducts an interview. The civil examiner should explain to the promoter that they are conducting a civil investigation but that the information provided will be shared with CI.
- (3) If a promoter under investigation inquires about criminal implications or whether they are the subject of a criminal investigation before CI has contacted the promoter, the civil examiner must be careful to provide accurate information and never to mislead or misrepresent the facts to the promoter.
- (4) When interviewing a subject, examiners and special agents should clearly explain the purpose of their respective investigations, their roles in the investigations, and the potential impact of cooperation by the subject.
- (5) When interviewing a witness, examiners and special agents should clearly explain the reason for the contact, their specific roles, and the potential impact of cooperation by the witness.
- (6) There is no specific prohibition against conducting joint examiner and special agent interviews of promoters. Examiners and special agents must clearly identify themselves and their roles at these meetings and prepare a joint memorandum of the interview. Examiners should keep a copy of their interview notes and provide the originals to the special agent.
- (7) Criminal Investigation may occasionally request that the civil examiner make no contact with the promoter. Title 26 USC 6700 and 6701 do not mandate an initial appointment letter or interview of the promoter. Area Counsel should be involved in any decision to conduct an investigation without contacting the promoter.
- (8) Title 26 USC 7602(c)(3)(C) provides an exception to the third party notification requirements for pending criminal investigations. Accordingly, if CI requests that there be no civil contact with the promoter, the third party notification letter (Letter 3164P, Third Party Notification for 26 USC 6700/6701 Investigations) is not required.

9.5.1.6  
(09-27-2011)  
**Information Sharing**

- (1) Information sharing among examiners, special agents and government attorneys increases the efficiency of parallel investigations.
- (2) Special agents should develop as much evidence as possible before using the grand jury process. This can be done through summonses, search warrants, witness interviews and undercover operations. Unless prohibited by the grand jury secrecy rules of Rule 6(e) of the Federal Rules of Criminal Procedure or the disclosure provisions of 26 USC 6103, information developed by CI may be shared with the civil operating division.
- (3) Grand jury information may not be shared with the civil operating division. Judicial districts and appellate courts have diverse rulings on what constitutes grand jury information. The grand jury process may never be used to perfect a civil investigation.

- (4) In grand jury investigations, concurrence of the DOJ attorney assigned to the criminal investigation must be secured prior to releasing or allowing civil examiners access to any records in CI's possession in order to avoid inadvertent release of grand jury information.
- (5) Title 26 USC 6103(h)(2) allows disclosure of relevant returns and return information to DOJ attorneys personally engaged in a grand jury proceeding or in preparation for a grand jury proceeding. However, unless a Rule (6)e order has been secured from the court, grand jury information cannot be shared with a civil DOJ attorney.
- (6) Criminal attorneys have a mandatory obligation to disclose certain information to criminal defendants. Therefore, examiners must provide CI access to all information in the civil examination and attorney files, including documents, interview notes and any other information the civil team gathers. To avoid unnecessary delays, sharing information should be an ongoing process throughout the investigation.

## 9.5.1.7

(09-27-2011)

**Undercover Operations  
and Search Warrants**

- (1) In general, civil actions will be temporarily stayed if CI is conducting an undercover operation or developing probable cause to execute a search warrant. Therefore, the benefits of an undercover action or search warrant should be weighed against the need to seek an injunction against a promoter.
- (2) Evidence obtained through the execution of a search warrant is generally not grand jury information. Therefore, if such evidence is obtained while grand jury proceedings are ongoing, and the search warrant affidavit does not contain grand jury information, the evidence may be made available to civil examiners. Further, it is the services position that, if grand jury information is included in the affidavit, the items seized during the search may be disclosed even if the affidavit may not be. If the affidavit supporting the warrant has been sealed by the court, consideration should be given to the fact that sharing the items seized in the search with civil examiners or attorneys may result in the affidavit being unsealed. Examiners should seek the guidance of Area Counsel for direction in these circumstances.
- (3) Disclosure of evidence obtained through the execution of a search warrant or through an undercover operation must be approved by the assigned DOJ attorney. Requests should be coordinated with CI, Area Counsel and the DOJ.

## 9.5.1.8

(07-30-2024)

**Administrative  
Summons**

- (1) In a parallel investigation, if the criminal investigation is being pursued administratively by CI rather than through a grand jury, and if there has been no criminal tax referral to the DOJ with respect to the tax liabilities involved in the civil investigation, civil tax examiners may generally issue an administrative summons to the subject of the investigation.
- (2) If an administrative summons is proposed and there has been a referral of the subject to the DOJ for grand jury investigation or criminal prosecution, the civil examiner must discuss the matter with Area Counsel and CT Counsel along with any DOJ attorney assigned to the investigation before issuing the summons (see IRM 4.32.2, Abusive Transactions, The Abusive Transactions (AT) Process).
- (3) Title 26 USC 7602(d) generally prohibits the issuance of an administrative summons if there is a DOJ referral in effect with respect to the subject of the



investigation. However, if a DOJ referral is in effect but the liability at issue in the civil investigation is different, the prohibition may not apply. For example, if a DOJ referral is in effect for the subject's income tax liability, a summons may be issued related to the investigation of the subject's liability under 26 USC 6700 for the subject's conduct during the same year (see Treas. Reg. 301.7602-1(c)(4)(ii), example (5)). The above-described discussions should be held to determine whether this exception applies.

9.5.1.9  
(09-27-2011)  
**Assessment of Penalties**

- (1) Generally, CI should request that the assessment of promoter and preparer penalties be delayed until completion of the criminal investigation. Discussions with CT Counsel should occur before requesting the delay.
- (2) An immediate civil assessment should be considered if the promoter is likely to flee the United States, dissipate assets or property, or place assets beyond the reach of the US Government. Special agents should consult with CT Counsel or DOJ attorneys if an immediate assessment is contemplated.

9.5.1.10  
(09-27-2011)  
**Participant Lists**

- (1) Criminal Investigation may provide a participant list or client list to civil examiners assigned to promoter investigations.
- (2) If CI does not have a participant list or client list, civil examiners should be given access to the available non-grand jury information, such as bank records, in order to establish a particular list or client list. In grand jury investigations, the use of CI evidence must be approved by the DOJ attorney assigned to the criminal investigation to prevent unintentional release of grand jury information.
- (3) Special agents should review the participant list and exclude those considered potential subjects in the criminal investigation.

9.5.1.10.1  
(09-27-2011)  
**Coordinating Participant Examinations Arising from Parallel Investigations**

- (1) The civil operating divisions will generally conduct income tax examinations of participant returns concurrently with criminal investigations. The special agent should keep apprised of all civil compliance actions with respect to participants.
- (2) Special agents must be mindful of pending civil statutes of limitations and the potential loss of tax revenues. Subject to the precautions described in the preceding subsections, special agents should make every effort to provide the civil operating divisions with information to facilitate participant examinations, such as participant lists or other information which may expedite the participant examination process.
- (3) Civil and special agents and their respective counsel should carefully consider whether any tax theories or positions advanced in the participant examinations are inconsistent with those that may be taken in the criminal case.

9.5.1.11  
(09-27-2011)  
**Prosecution Recommendations**

- (1) Original tax returns, photocopies, transcripts, and/or all evidentiary matters relevant and material to the determination of whether or not criminal proceedings should be recommended should be obtained for inclusion as exhibits to the prosecution recommendation report. Summaries may be substituted for lengthy transcripts. For a detailed discussion of prosecution recommendation reports, see IRM 9.5.8, Investigative Reports.

9.5.1.12  
(09-27-2011)

**General Investigative  
Issues - Burden of Proof**

- (1) In criminal cases, the government bears the burden of proving all the elements of the offense “beyond a reasonable doubt.”
- (2) The burden of proof remains on the government throughout the trial, although the burden of going forward with evidence may shift from one side to the other. For a more detailed discussion of the burden of proof, see IRM 9.6.4, Trial.

9.5.1.13  
(02-06-2024)

**Proof of Venue**

- (1) The term “venue” means the district or geographic area in which the trial must be held. In general, venue lies in the judicial district in which the crime was committed. See Federal Rule of Criminal Procedure 18. If the crime consists of a failure to comply with a legal requirement, venue lies where the compliance should have occurred. A defendant may move to transfer venue because of prejudice or for the sake of convenience. For a more detailed discussion of venue, see IRM 9.6.4, Trial.
- (2) The burden of proving proper venue is an essential part of the government’s case. The standard for proving venue is by a preponderance of the evidence, not proof beyond a reasonable doubt.
- (3) For purposes of proving venue, special agents should gather information relating to:
  - a. Residence address of the taxpayer at the time the alleged offense was committed.
  - b. Principal business address of the taxpayer at the time the alleged offense was committed.
  - c. Place where the records were maintained, where the return was prepared, and where the return was signed.
  - d. Location of the post office where the return was mailed.
  - e. Location of the IRS office where the return was delivered if the return was not mailed.
  - f. Any other pertinent evidence that may establish or assist in determining venue.

9.5.1.14  
(09-27-2011)

**Types of Evidence**

- (1) In general, evidence is the means by which an alleged fact is established or disproved. Evidence may be presented orally through witness testimony, and/or by the introduction of records or other physical objects.
- (2) Direct evidence is evidence that tends to prove a disputed fact without any inference or presumption. Evidence is direct when the principal facts in dispute are sworn to by those who have actual knowledge of them by means of their senses. Direct evidence may take the form of admissions or confessions made in or out of court.
- (3) Circumstantial evidence is evidence that tends to prove a disputed fact by inference. A jury may properly find that circumstantial evidence outweighs conflicting direct evidence if the inference is more convincing than any other explanation offered. Circumstantial evidence is the only type of evidence generally available to show those elements of a crime that exist in the mind of the perpetrator, such as intent or motive. Therefore, proof of “willfulness” in most Internal Revenue violations is based on circumstantial evidence.
- (4) In addition to proving willfulness, circumstantial evidence such as evidence of increases in net worth, expenditures, or bank deposits is also frequently used to prove unreported income. When gathering evidence regarding a subject’s



expenditures, it is important to remember that the agent's testimony alone will not be sufficient. Rather, the government must be prepared to call third-party payees as witnesses or introduce other independent testimonial or documentary evidence to establish the purpose of the payments. Failure to do so would create a so-called "Greenberg problem," named after a First Circuit case of that name.

- (5) To save time and expense, a trial judge may accept certain facts without requiring proof if the facts are commonly known or can be easily discovered. This is known as "judicial notice."

9.5.1.15  
(09-27-2011)  
**Oral and Documentary  
Evidence**

- (1) Evidence may be presented orally through witnesses, and/or by the introduction of records or other physical objects. Oral testimony consists of statements made by living witnesses while under oath or affirmation. For a detailed discussion of the use of witnesses at trial (see IRM 9.6.4, Trial). Documentary evidence includes formal writings such as judicial and official records, contracts and deeds, as well as more informal writings such as letters, memoranda, books, and records belonging to private persons and organizations. Maps, diagrams, and photographs are also classified as documentary evidence.
- (2) Generally, both oral and documentary evidence are needed to support a criminal tax case. Written records of transactions, such as purchases and sales of real and personal property, loans, etc. are not sufficient to prove that the transactions occurred. Therefore, witnesses must be produced who will testify about the transactions and attest to the authenticity of the documents. During the investigation, parties to the transactions should be questioned to determine whether the documents or entries truthfully relate all the facts and/or if there are additional facts or circumstances that should have been recorded. The following examples illustrate this principle:
  - a. To support an allegation of unreported sales, witnesses should be interviewed to determine: whether checks and invoices represent all the transactions that occurred; whether the documents truthfully record the events; whether additional sums might have been paid or refunded; whether there were any other methods of payment or other parties to the transactions; and whether there is other relevant information.
  - b. A contract of sale, settlement sheet, closing statement or recorded deed does not necessarily reflect all the facts involved in a real estate transaction. Payments over and above those shown in the instrument, as well as the use of nominees, may be revealed by questioning the parties to the transaction. Mortgages and other encumbrances may not actually exist even though recorded documents list them. Proof of real estate transactions should, therefore, include the testimony of the parties involved.

9.5.1.16  
(09-27-2011)  
**Chain of Custody**

- (1) See IRM 9.4.9, Investigative Techniques, Search Warrants, Evidence, and Chain of Custody, for procedures on preserving the chain of custody, identification of evidence, and transfer of evidence.

9.5.1.17  
(09-27-2011)  
**Admissibility: General Principles**

- (1) When conducting an investigation, special agents should be aware of the rules that determine whether the evidence gathered will be admissible at trial. The admissibility of evidence in Federal trials is governed by the Federal Rules of Evidence (FRE) and by case law. In addition, rules for the admissibility of certain forms of documentary evidence in Federal courts are provided in 28 USC 1731 – 1745.
- (2) Evidence obtained through an illegal search or seizure is inadmissible at trial.
- (3) The inadmissibility of evidence for one purpose or as to one party does not preclude its use for another purpose or party (see FRE 105). For example, tax returns for years prior to those charged in an indictment may be used to corroborate the starting point for a net worth computation, even though such returns would be inadmissible as proof of the offenses charged.

9.5.1.18  
(09-27-2011)  
**Relevancy**

- (1) Evidence must be relevant in order to be admissible. Evidence is relevant when it tends to make the existence of a fact that is of consequence to the determination of the action more or less probable than it would be without the evidence (see FRE 401).
- (2) Not all relevant evidence is admissible. The rules of evidence may preclude the admission of relevant evidence on other grounds.
- (3) Special agents should report all facts obtained concerning the subject of an investigation, even if there is doubt as to the relevancy of particular facts. There are no absolute standards for relevancy, and judges have broad discretion in determining what evidence is relevant.

9.5.1.19  
(09-27-2011)  
**Requirement of Authentication or Identification**

- (1) Evidence must be properly authenticated or identified in order to be admissible (see FRE 901). In other words, when physical evidence is presented in the courtroom, other evidence must often be presented to prove that the evidence is what it is claimed to be.
- (2) Federal Rules of Evidence 901 provides a list of examples of ways in which evidence may be authenticated.
- (3) Certain public documents and records are self-authenticating (see FRE 902).

9.5.1.20  
(09-27-2011)  
**Hearsay**

- (1) One form of evidence that is generally inadmissible, subject to certain exceptions, is hearsay. Hearsay is defined as an out-of-court statement (i.e., an oral or written assertion, or nonverbal conduct intended as an assertion) offered in evidence to prove the truth of the matter asserted. Under FRE 802, hearsay statements are inadmissible at trial unless an exception applies. Lack of opportunity for cross-examination and unreliability are the principal reasons for excluding hearsay testimony.
- (2) An example of inadmissible hearsay would be a SA's testimony that a third party told them certain checks written by the defendant were personal in nature. The personal nature of the checks may instead be proven through the defendant's admissions, records and testimony, as well as through third party records.

- (3) Prior statements made by a witness while testifying at a trial or hearing under oath and subject to cross-examination is not hearsay (see FRE 801(d)(1)(A)). This does not include testimony taken by a special agent for use in an affidavit.
- (4) A statement offered against a party (known as an “admission by party-opponent”) is not hearsay if it is one of the following:
  - a. The party’s own statement.
  - b. A statement shown to have been adopted or believed by the party.
  - c. A statement made by a person authorized by the party to make a statement concerning the subject.
  - d. A statement by the party’s agent or servant concerning a matter within the scope of the agency or employment, and made during the existence of the relationship.
  - e. A statement made by a co-conspirator during the course and in furtherance of the conspiracy.

## 9.5.1.20.1 (09-27-2011)

### Hearsay Exceptions: Availability of Declarant Immaterial

- (1) Federal Rules of Evidence 803 lists a number of exceptions to the hearsay rule, which apply regardless of whether the declarant (i.e., the person who made the statement) is available as a witness. These exceptions include the following:
  - a. **Present Sense Impression** -- A statement describing an event or condition made while the declarant was perceiving the event or condition, or immediately thereafter.
  - b. **Excited Utterance** -- A statement relating to a startling event or condition made while the declarant was under the stress of excitement caused by the event or condition. For example, in order to prove there were betting slips at a bookmaking establishment, a witness might be permitted to testify that someone shouted, “Burn the betting slips!” during a raid.
  - c. **Then-Existing Mental, Emotional, or Physical Condition** -- A statement of the declarant’s then-existing state of mind, emotions, or physical condition.
  - d. **Statements for Purposes of Medical Diagnosis or Treatment** -- Statements made for purposes of medical diagnosis or treatment and describing a patient’s medical history, past or present symptoms, or the cause of those symptoms.
  - e. **Recorded Recollection** -- A memorandum or record concerning a matter about which a witness once had knowledge but now has insufficient recollection to enable them to testify fully and accurately. For example, if a special agent has taken a statement from a witness, and the witness no longer recollects the facts in their statement, the statement may be read at trial as a record adopted by the witness, regardless of whether the witness had signed it.
  - f. **Records of Regularly Conducted Activity** -- A record in any form of events, conditions, opinions, or diagnoses, made at or near the time by (or from information transmitted by) a person with knowledge, if kept in the ordinary course of business.
  - g. **Public Records and Reports** -- Records of public offices or agencies regarding the activities of the office or agency, or matters observed by the office or agency (excluding matters observed by law enforcement personnel during the course of criminal investigations).

- h. **Market Reports, Commercial Publications** -- Market quotations, tabulations, lists, directories, or other published compilations, generally used and relied upon by the public or by persons in particular occupations.
- i. **Reputation as to Character** -- Reputation of a person's character among associates or in the community.
- j. **Judgment of Previous Conviction** -- Evidence of a final judgment, entered after a trial or upon a plea of guilty (but not upon a plea of nolo contendere), adjudging a person guilty of a crime punishable by death or imprisonment in excess of 1 year, to prove any fact essential to sustain the judgment, but not including, when offered by the government in a criminal prosecution for purposes other than impeachment, judgments against persons other than the accused. The pendency of an appeal may be shown but does not affect admissibility.

9.5.1.20.2  
(09-27-2011)

**Hearsay Exceptions:  
Declarant Unavailable**

- (1) Federal Rules of Evidence 804 lists exceptions to the hearsay rule that only apply if the declarant is unavailable as a witness.
- (2) Unavailability as a witness includes situations in which the declarant:
  - a. Is exempted by ruling of the court on the ground of privilege from testifying concerning the subject matter of their statement.
  - b. Persists in refusing to testify concerning the subject matter of their statement despite an order of the court to do so.
  - c. Testifies to a lack of memory of the subject of their statement.
  - d. Is unable to be present or to testify at the hearing because of death or then existing physical or mental illness or infirmity.
  - e. Is absent from the hearing and the proponent of the declarant's statement has been unable to procure the declarant's attendance by process or other reasonable means.

**Note:** A declarant is not unavailable as a witness if the above-described exemption, refusal, claim of lack of memory, inability, or absence is due to the procurement or wrongdoing of the proponent of the declarant's statement for the purpose of preventing the witness from attending or testifying.

- (3) Pursuant to FRE 804, the following are not excluded by the hearsay rule if the declarant is unavailable as a witness:
  - a. **Former Testimony** -- Testimony given as a witness at another hearing or in a deposition of the same or a different proceeding, if the party against whom the testimony is now offered had an opportunity to develop the testimony by direct, cross, or redirect examination.
  - b. **Statement Under Belief of Impeding Death** -- In a prosecution for homicide or in a civil action or proceeding, a statement made by a declarant under the belief that their death was imminent, concerning the cause or circumstances of what they believed to be impending death. This exception is applicable only in homicide investigations or related civil actions. Dying declarations are not normally relevant to tax investigations.
  - c. **Statement Against Interest** -- A statement that was at the time of its making so far contrary to the declarant's pecuniary or proprietary interest, or so far tended to subject them to civil or criminal liability, or to render invalid a claim by them against another, that a reasonable man or woman in the declarant's position would not have made the statement unless they believed it to be true.

- d. **Statement of Personal or Family History** -- A statement concerning the declarant's own birth, adoption, marriage, divorce, legitimacy, relationship by blood, adoption, or marriage, ancestry, or other similar fact of personal or family history, even though declarant had no means of acquiring personal knowledge of the matter stated; or a statement concerning the foregoing matters or the death of another person, if the declarant was related to the other by blood, adoption, or marriage or was so intimately associated with the other's family as to be likely to have accurate information concerning the matter declared.
- e. **Forfeiture by Wrongdoing** -- A statement offered against a party that has engaged or acquiesced in wrongdoing that was intended to, and did, procure the availability of the declarant as a witness.

9.5.1.20.3  
(09-27-2011)  
**Residual Exception to Hearsay Rule**

- (1) Under FRE 807, a statement not specifically covered by any of the foregoing exceptions but having equivalent circumstantial guarantees of trustworthiness is not excluded by the hearsay rule, if the court determines that:
  - a. The statement is offered as evidence of a material fact.
  - b. The statement is more probative of the point for which it is offered than any other evidence the proponent can procure through reasonable efforts.
  - c. The general purposes of the Federal Rules of Evidence and the interests of justice will best be served by admission of the statement into evidence.

**Note:** A statement may not be admitted under this exception unless the proponent of it makes known to the adverse party sufficiently in advance of the trial or hearing to provide the adverse party with a fair opportunity to prepare to meet it, their intention to offer the statement and the particulars of it, including the name and address of the declarant.

9.5.1.21  
(09-27-2011)  
**Best Evidence Rule**

- (1) Federal Rules of Evidence 1002, known as the best evidence rule, requires that the content of a writing, recording or photograph be proven by producing the original writing, recording or photograph, except as otherwise provided by the FRE or by statute.
- (2) The best evidence rule applies only where the proponent seeks to prove the content of the writing, recording or photograph. Facts other than content may be proven without producing the original. For example, the fact that a sales contract was entered into may be proven by testimony alone, even though testimony would not be sufficient to prove the terms of the contract.

9.5.1.22  
(09-27-2011)  
**Secondary Evidence**

- (1) Evidence produced in place of an original document is classified as "secondary evidence." Examples of secondary evidence include copies of documents (with certain exceptions described below) and witness testimony as to the documents' contents.
- (2) If there is no genuine question as to the authenticity of the original writing, recording or photograph, and no other reason exists for requiring the original, a duplicate is admissible (see FRE 1003). There must be satisfactory evidence that the secondary evidence correctly reflects the contents of the original.

- (3) Further, secondary evidence of the contents of a document may be admissible if:
  - a. The original document was lost or destroyed (unless it was lost or destroyed in bad faith).
  - b. The original document cannot be obtained by any judicial process or procedure.
  - c. The original document is in the opposing party's possession, the opposing party was on notice that the contents would be a subject of proof at trial, and the opposing party does not produce the original.
  - d. The original document is not closely related to a controlling issue (see FRE 1004). The party seeking to introduce the secondary evidence must have used all reasonable means to obtain the original document.
- (4) One example of a situation in which secondary evidence was held admissible occurred in a case where the government was unable to produce the defendants' original books and records because they were in the defendants' possession, and the Fifth Amendment protection against self-incrimination prevented the court from ordering the defendants to produce the books and records. In that case, the Fourth Circuit held that, so long as the government demonstrated that the original books and records were in the defendant's possession, the government could present testimony of government agents as to the contents and photostatic copies of certain pages from the books and records.
- (5) If the original document has been destroyed by the party who offers secondary evidence of its contents, that person bears the burden of proving that the destruction was accidental or was done in good faith.

9.5.1.23  
(09-27-2011)

**Admissibility of Copies  
of Business and  
Government Records**

- (1) If a business, institution, member of a profession or government agency keeps certain records in the regular course of business and makes copies (i.e., photographic, photostatic or microfilmed reproductions) of those records in the regular course of business, such copies are admissible as originals whether the true originals have been destroyed or not, so long as the copies are accurate reproductions and are satisfactorily identified (see 28 USC 1732). Similarly, properly authenticated copies or transcripts of government records and papers are admissible as originals (see 28 USC 1733). Together, 28 USC 1732 and 1733 are known as the "Federal Shop Book Rule."
- (2) This rule is particularly applicable to bank records, because it is common bank practice to microfilm ledger sheets, deposit tickets and checks.
- (3) The Federal Shop Book Rule does not exclude from evidence any document or copy thereof that is otherwise admissible under the FRE. Conversely, the mere fact that a copy has been made in the regular course of business is not enough to make it admissible. The rules of admissibility and relevancy must still be applied, just as for any other evidence.

9.5.1.24  
(09-27-2011)

**Admissibility of Copies  
Not Made in the Regular  
Course of Business**

- (1) A copy of a document that is not made in the regular course of business is considered secondary evidence of the contents of the original and may be admissible if the original cannot be produced and a valid reason has been given for failing to produce it. In addition, a court may permit an original document, such as a tax return, to be placed in evidence and then substituted with a copy if there is no defense objection.



- (2) Title 26 USC 7513 gives the IRS authority to have returns and other documents copied. When copies of documents are obtained during an investigation, they should be initialed on the back, after comparison with the original, by the individual who made the copy or the special agent who obtained the document that was copied. The date of the comparison should also be noted after the initials, and the source of the original document should be identified on the back of the copy or on an initialed attachment or memorandum. This procedure will ensure proper authentication at trial.

9.5.1.25  
(09-27-2011)  
**Admissibility of Transcripts**

- (1) Transcriptions of documents are admissible under the same principles governing the admission of photographic or photostatic reproductions. Special agents should ensure that transcripts are properly authenticated by carefully comparing the transcript with the original and certifying that the transcript is correct. The certification must indicate when, by whom and where the transcript was made, as well as the source from which it was taken. Each page should be numbered to show that it forms part of a larger whole (e.g., "page 1 of 5," "page 2 of 5," etc.). When a partial transcript is made, it should be so indicated (e.g., "excerpt from page 5 of the cash receipts book").

9.5.1.26  
(09-27-2011)  
**Admissibility of Charts, Summaries and Calculations**

- (1) The contents of lengthy writings, recordings or photographs which cannot conveniently be examined in court may be presented in the form of a chart, summary or calculation (see FRE 1006). The originals, or duplicates, must be made available for examination and/or copying by the other parties, and the court may order that they be produced in court.
- (2) Charts are particularly effective in net worth investigations to summarize the items and computations upon which the allegation of additional income is based. Summaries are frequently used to simplify the presentation of a series of transactions upon which a specific item investigation is based. For example, with respect to the purchase and resale of used automobiles, a schedule showing the details of the transactions may be admitted into evidence after the introduction of pertinent records and testimony. However, care should be exercised in the preparation of charts and summaries to avoid prejudicial headings or titles. For example, a chart listing a series of unreported sales should not be entitled "Fraudulently Omitted Sales."
- (3) A schedule prepared by the investigating agent from the taxpayer's books and records may be admissible as secondary evidence of the contents thereof. It should be properly certified and authenticated in a similar manner to that used for transcripts.

9.5.1.27  
(09-27-2011)  
**Admissibility of Agent's Notes, Diaries, Workpapers, and Memoranda**

- (1) Although not ordinarily presented as evidence, the notes, diaries, workpapers and memoranda made by an agent during an investigation may be used to refresh the memory of a witness while testifying or before testifying, at the court's discretion. If used in this way, the opposing party is entitled to have the writings produced at trial and to offer into evidence those portions that relate to the witness's testimony (see FRE 612). Under certain circumstances, such writings may also be introduced by the opposing party for impeachment purposes (see FRE 613). Because an agent's notes, diaries, workpapers and memoranda may be used in court, such documents must be carefully prepared to ensure their accuracy.



9.5.1.28  
(07-30-2024)

**Admissibility of  
Computer Records**

- (1) Computer records are generally admissible upon a showing that they fall within FRE 803(6), an exception to the hearsay rule for records “kept in the course of a regularly conducted business activity.” The courts have indicated that computer records may generally be admitted as business records if they were kept pursuant to a routine procedure that tended to ensure their accuracy.
- (2) The standard for authenticating computer records is the same as that for authenticating other records. Thus, before a party may move for admission of a computer record, the party must produce evidence “sufficient to support a finding that the [computer record] in question is what its proponent claims”, see FRE 901(a).
- (3) Challenges to the authenticity of computer records often take one of the following three forms:
  - a. The opposing party may question whether the records were altered, manipulated, or damaged after they were created. Absent specific evidence that tampering occurred, the courts have responded to such claims with skepticism.
  - b. The opposing party may challenge the reliability of the computer program that generated the records. Courts have indicated that the government can overcome this challenge by demonstrating that the records are trustworthy and by affording the opposing party an opportunity to investigate their accuracy.
  - c. The opposing party may challenge the authenticity of computer-stored records by questioning the identity of their author. Unlike handwritten records, computer-stored records offer their authors an unusual degree of anonymity. For example, internet technologies permit users to send e-mails that are effectively anonymous. Therefore, circumstantial evidence may be needed to prove the authorship and authenticity of a computer record. For example, to show that a defendant engaged in an online conversation with an undercover IRS agent in an Internet chat room devoted to tax evasion, the government might offer a printout of the Internet chat conversation, along with billing records obtained from the internet service provider and a document found in the defendant’s home bearing the undercover agent’s contact information.
- (4) If a computer record offered into evidence contains only computer-generated data untouched by human hands, the record does not contain hearsay. In such cases, the government must establish the authenticity of the record but does not need to establish that a hearsay exception applies.
- (5) Under FRE 1001(d), any printout or other legible output of computer stored data, if shown to reflect the data accurately, is an “original.” Thus, an accurate printout of computer data always satisfies the best evidence rule.

9.5.1.29  
(09-27-2011)

**Official Government  
Records**

- (1) The admissibility of official records and copies or transcripts is governed by 28 USC 1733, which provides as follows:
  - a. Books or records of account or minutes of proceedings of any department or agency of the United States, shall be admissible to prove the act, transaction or occurrence as a memorandum of which the same were made or kept.

- b. Properly authenticated copies or transcripts of any books, records, papers or documents of any department or agency of the United States shall be admitted into evidence equally with the originals thereof

9.5.1.30  
(02-06-2024)  
**Authentication of Official Records**

- (1) The method of authenticating official records is set forth in Federal Rule of Civil Procedure 44, which is made applicable to criminal trials by Federal Rule of Criminal Procedure 27. An official record may be proven by an official publication of the record or a copy attested by the officer with legal custody of the record and accompanied by a certificate that the officer has custody. The certificate must be made under seal by a judge or any public officer in the district or political subdivision where the record is kept.

**Note:** Verification of the official status of Disclosure Officers is not required on authenticated copies of IRS documents certified to by Disclosure Officers over their seal of office (DO 11-5).

Tax returns that have been filed, or certified copies of filed tax returns, are admissible under 28 USC 1733 as official records of the IRS (see 26 USC 6103). The procedures and required forms for certifying tax returns and other official records are set forth in IRM 11.3, Disclosure of Official Information.

- (2) Although tax returns and other official records are usually offered into evidence through an IRS representative, authenticated copies are generally admissible without a representative.
- (3) A Form 4340, Certificate of Assessments, Payments, and Other Specified Matters, is customarily offered into evidence through a representative of the IRS as a transcript of the records to which it relates. However, this form, if properly authenticated in accordance with Federal Rule of Civil Procedure 44, are admissible without the presence of an IRS representative.
- (4) An official record may be self-authenticating under FRE 902.

9.5.1.31  
(09-27-2011)  
**Proof of Lack of Official Record**

- (1) It is sometimes desirable or necessary to prove that a search of official files has resulted in a finding that there is no record of a certain document. For example, in a prosecution for failure to file an income tax return, the government, in addition to introducing oral testimony, may wish to introduce documentary evidence that a search has disclosed no record of such return. Under Rule 44(b) of the Federal Rules of Civil Procedure, which is made applicable to criminal trials by Federal Rule of Criminal Procedure 27, a written statement that a diligent search of designated records did not reveal the record or entry at issue is admissible as evidence that the records contain no such record or entry, so long as the statement is properly authenticated.
- (2) Procedures and a standard form for the certification of a lack of records by the Disclosure Officer are provided in IRM 11.3.6, Disclosure of Official Information, Seals and Certifications.

9.5.1.32  
(09-27-2011)  
**Presumptions**

- (1) A presumption is an assumption of fact that the law requires or permits the jury to make.

9.5.1.32.1  
(09-27-2011)  
**Conclusive  
Presumptions**

- (1) A conclusive presumption must be accepted by the jury and cannot be rebutted. In general, conclusive presumptions are unconstitutional because they conflict with the presumption of innocence and interfere with the fact-finding role of the jury.

9.5.1.32.2  
(09-27-2011)  
**Rebuttable  
Presumptions**

- (1) A rebuttable presumption is one that may be overcome by evidence to the contrary. Examples of rebuttable presumptions include the following:
- a. In criminal investigations, a defendant is presumed to be innocent until proven guilty beyond a reasonable doubt.
  - b. The signature on a tax return is presumed to be authentic. See 26 USC 6064. However, the government must be prepared to prove the authenticity of a signature.
  - c. Every person is presumed to know the law, and ignorance of the law is no excuse for its violation. However, this presumption does not relieve the government from proving willfulness in criminal tax cases. The government must prove that the law imposes a duty on the defendant, and that the defendant voluntarily and intentionally violated that duty. Evidence of such actions as hiding assets or backdating documents may disprove a defendant's claim of a misunderstanding of the law.
  - d. A person signing an instrument is presumed to have knowledge of its contents.
  - e. A person of ordinary intelligence is presumed to intend the natural and probable consequences of their voluntary acts. Although this presumption in itself will not relieve the burden of proving willfulness, it does permit inferences to be drawn from the acts of the defendant which may constitute circumstantial proof of willfulness.
  - f. Proof that a letter, properly stamped and addressed, was mailed and was not returned to the return address creates a presumption that it was received.

9.5.1.33  
(09-27-2011)  
**Privilege Against  
Self-Incrimination**

- (1) The Fifth Amendment of the Constitution provides that no person "shall be compelled in any criminal case to be a witness against himself." Therefore, a witness (whether or not the witness is the defendant) cannot be compelled to answer any question that may incriminate them.
- (2) The Fifth Amendment privilege against self-incrimination protects only evidence that is testimonial or communicative in nature from compelled disclosure. Thus, the privilege would not apply to private business records seized under a search warrant, provided the individual claiming the privilege was not asked to identify the documents.
- (3) The privilege applies only to natural persons and not to corporations or other entities. It generally cannot be asserted on behalf of another person.
- (4) Voluntary disclosure of an incriminating fact waives the privilege for that and all other relevant facts where no further incrimination would result.

9.5.1.34  
(09-27-2011)  
**Privileged  
Communications**

- (1) Communications may be "privileged," i.e., protected from compelled disclosure in litigation or other proceedings, if they take place within certain relationships. Courts have generally held that a privilege may apply to a communication only if the following general conditions are satisfied:

- a. The communication must be made with the belief that it will not be disclosed.
- b. The element of confidentiality must be essential to the relationship between the parties.
- c. The relationship must be one that in the opinion of the community ought to be fostered.
- d. The injury to the relationship by the disclosure of the communication must be greater than the benefit gained by the correct disposition of the litigation or other proceeding.

- (2) There are a number of generally recognized privileges in Federal judicial proceedings, including the attorney-client privilege, spousal privileges, the clergy-communicant privilege (also known as “priest-penitent” privilege), and the government-informant privilege. By contrast, there is no Federal privilege for communications between parent and child, physician and patient (except where the physician is a psychotherapist), or journalist and confidential source.

9.5.1.34.1  
(09-27-2011)  
**Attorney - Client  
Privilege**

- (1) In general, the attorney-client privilege protects the confidentiality of communications between a client and their attorney, so long as the communications are related to the purpose of seeking legal advice and the client does not waive the privilege. When it applies, the privilege covers corporate as well as individual clients.
- (2) The mere existence of an attorney-client relationship does not mean that every communication between the client and the attorney is privileged. Rather, the communication must have been made in confidence for the purpose of obtaining legal advice from the attorney. If the communication were made for the purpose of preparing a tax return or obtaining business advice, it would generally not be privileged. Similarly, if the communication were made in the presence of a third party rather than in confidence, it would generally not be privileged.
- (3) The attorney-client privilege applies only to communications and not to the facts underlying a communication. Therefore, if a client has knowledge of certain facts, those facts do not become privileged simply because the client has discussed them with an attorney. In addition, the attorney-client privilege generally does not protect the identity of a client, nor does it protect the nature of the fee arrangement between the attorney and the client.
- (4) Communications with an accountant employed by an attorney or retained by a taxpayer at the attorney’s request to perform services essential to the attorney-client relationship may be protected by the attorney-client privilege.

**Note:** Although there is a separate, statutory privilege for certain communications between taxpayers and non-attorney tax practitioners (such as accountants), that privilege does not apply to criminal matters (see 26 USC 7525(a)(2)).

- (5) The attorney-client privilege does not apply if the client sought the attorney’s advice for the purpose of engaging in, assisting, or furthering the commission of a future crime or fraud, even if the attorney was unaware of this improper purpose. The burden of proof for this “crime-fraud exception” to the attorney-client privilege is on the party seeking to invoke the exception.

- 9.5.1.34.2  
(09-27-2011)  
**Spousal Privileges**
- (1) There are two spousal privileges: the marital communications privilege and the adverse testimony privilege.
- 9.5.1.34.3  
(09-27-2011)  
**Marital Communications Privilege**
- (1) Communications made privately between spouses during a valid marriage are generally privileged.
- (2) The marital communications privilege is not extended to communications made prior to the marriage or after divorce, and it does not apply to communications made in the presence of a third party. Further, the privilege applies only to communications, not to acts, and it does not protect communications concerning a joint criminal enterprise.
- (3) Privileged communications made during marriage remain privileged after termination of the marriage.
- (4) The marital communications privilege may be asserted by either spouse.
- 9.5.1.34.4  
(09-27-2011)  
**Adverse Testimony Privilege**
- (1) When one spouse is called as a witness against the other, the testifying spouse alone has the privilege of refusing to testify adversely as to any act observed or any non-confidential communications made before or during the marriage. The spouse may neither be compelled to testify nor prevented from testifying.
- 9.5.1.34.5  
(09-27-2011)  
**Clergy-Communicant Privilege**
- (1) The Federal courts recognize a privilege that protects confidential communications made to a clergy person in their capacity as such. However, this privilege has not been extended to financial transactions, such as contributions made through a clergyman.
- 9.5.1.34.6  
(09-27-2011)  
**Informant - Government Privilege**
- (1) The informant-government privilege allows enforcement agencies to withhold from disclosure the identity of persons who furnish them with information concerning violations of law.
- (2) The purpose of the privilege is to preserve the anonymity of informants and thereby encourage citizens to communicate their knowledge of the commission of crimes to law enforcement officials. Thus, the contents of a communication are not privileged unless they tend to reveal the informant's identity.
- (3) This privilege differs from the others described above in that it may be waived only by the government.
- (4) Where disclosure of an informant's identity or the content of the communication would be relevant and helpful to the defense or is essential to a fair determination, the trial court may order disclosure. If the government then withholds the information, the court may dismiss the indictment.

**Exhibit 9.5.1-1 (02-26-2025)****STATE MAPPING FOR POA/CAF PROGRAM**

| STATE         | IRS CAMPUS |
|---------------|------------|
| Alabama       | MAMC       |
| Alaska        | OAMC       |
| Arizona       | OAMC       |
| Arkansas      | MAMC       |
| California    | OAMC       |
| Colorado      | OAMC       |
| Connecticut   | MAMC       |
| Delaware      | MAMC       |
| Florida       | MAMC       |
| Georgia       | MAMC       |
| Hawaii        | OAMC       |
| Idaho         | OAMC       |
| Illinois      | MAMC       |
| Indiana       | MAMC       |
| Iowa          | OAMC       |
| Kansas        | OAMC       |
| Kentucky      | MAMC       |
| Louisiana     | MAMC       |
| Maine         | MAMC       |
| Maryland/DC   | MAMC       |
| Massachusetts | MAMC       |
| Michigan      | MAMC       |
| Minnesota     | OAMC       |
| Mississippi   | MAMC       |
| Missouri      | OAMC       |
| Montana       | OAMC       |
| Nebraska      | OAMC       |
| Nevada        | OAMC       |
| New Hampshire | MAMC       |

**Exhibit 9.5.1-1 (Cont. 1) (02-26-2025)**  
**STATE MAPPING FOR POA/CAF PROGRAM**

|                  |      |
|------------------|------|
| New Jersey       | MAMC |
| New Mexico       | OAMC |
| New York-city    | MAMC |
| New York-upstate | MAMC |
| North Carolina   | MAMC |
| North Dakota     | OAMC |
| Ohio             | MAMC |
| Oklahoma         | OAMC |
| Oregon           | OAMC |
| Pennsylvania     | MAMC |
| Rhode Island     | MAMC |
| South Carolina   | MAMC |
| South Dakota     | OAMC |
| Tennessee        | MAMC |
| Texas            | OAMC |
| Utah             | OAMC |
| Vermont          | MAMC |
| Virginia         | MAMC |
| Washington       | OAMC |
| West Virginia    | MAMC |
| Wisconsin        | OAMC |
| Wyoming          | MAMC |
| International    | MAMC |