



MANUAL TRANSMITTAL

Department of the Treasury
Internal Revenue Service

9.5.11

FEBRUARY 6, 2024

EFFECTIVE DATE

(02-06-2024)

PURPOSE

- (1) This transmits revised IRM 9.5.11, Other Investigations.

MATERIAL CHANGES

- (1) Added Internal Controls to be compliant with IRM 1.1.2.2.4, Address Management and Internal Controls and IRM 1.4.2, Resource Guide for Managers, Monitoring and Improving Internal Control.
- (2) Moved section 9.5.11.11.1 “Definitions” from end of IRM to after Acronym table and renamed it “Terms and Definitions” renumbered to 9.5.11.1.7.
- (3) Updated verbiage of “Director, Operations, Policy and Support” to “Director, Global Operations” throughout the IRM.
- (4) Updated organization codes from “CI-HQ-IO” to “CI-HQ-GO” throughout the IRM.
- (5) Section 9.5.11.2.3.1(4)(b) updated to “The special agent should take the container to the Asset Forfeiture Coordinator for safekeeping.”
- (6) Section 9.5.11.4 updated IRM reference to 5.8.12, Independent Administrative Review.
- (7) Section 9.5.11.4.1(2) updated IRM reference to 8.23, Offer in Compromise.
- (8) Section 9.5.11.6.2(1) put (a)-(e) into a table format.
- (9) Section 9.5.11.9.1(2) updated website reference to <https://www.irs.gov/pub/irs-pdf/f14457.pdf>.
- (10) Section 9.5.11.9.2(5) removed “See IRM section 4.6.3 for further information on civil processing”.
- (11) Section 9.5.11.9.3(4) and 9.5.11.9.3(5) updated contact email address to ovdcidirect@ci.irs.gov.
- (12) Section 9.5.11.11 removed “(7) Treasury Directive 55–01, Victims and Witness Assistance, dated January 9, 1999, provides policy and guidelines to be followed by Treasury Law Enforcement personnel in responding to the needs of crime victims and witnesses. The guidelines seek to ensure all victims and witnesses receive the assistance and protection to which they are entitled under the law. For further information see subsection 9.5.11.11.10 and Treasury Directive 55–01, Victims and Witness Assistance, at www.ustreas.gov/regs/” it is obsolete and there is no new directive.
- (13) Section 9.5.11.11.10(1) removed “Treasury Directive 55-01 (TD 55-01)” and added “Title 42 10606 and 42 USC 10607). Title 42 10606 was superseded by the Justice for All Act of 2004”.
- (14) Section 9.5.11.11.10(2) removed “that form the bases for TD 55-01”.
- (15) Section 9.5.11.11.10(3) removed “TD 55-01” and added “the laws”.
- (16) Section 9.5.11.11.10.1(1) removed “directive” and “TD 55-01” and added “provisions of the Title 42 USC 10607” and “Title 42 USC 10607”.
- (17) Section 9.5.11.11.10.2(1) removed “TD 55-01” and added “Title 42 USC 10607”.

- (18) Section 9.5.11.11.10.3(1) removed “TD 55-01 has” and added “provisions of Title 42 USC 10607 have”.
- (19) Additional revisions, deletions, and grammatical changes were made throughout the section, that did not result in substantive changes but contributed to procedural clarity of the subject matter.

EFFECT ON OTHER DOCUMENTS

This IRM supersedes IRM 9.5.11 dated September 17, 2020.

AUDIENCE

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9.5.11

Other Investigations

Table of Contents

9.5.11.1 Program Scope and Objectives

9.5.11.1.1 Background

9.5.11.1.2 Authority

9.5.11.1.3 Roles and Responsibilities

9.5.11.1.4 Program Management and Review

9.5.11.1.5 Program Controls

9.5.11.1.6 Acronyms

9.5.11.1.7 Terms and Definitions

9.5.11.1.8 Related Resources

9.5.11.2 Bribery & Undue Influence

9.5.11.2.1 Elements of Offer to Bribe

9.5.11.2.2 Investigation of Attempted Bribery or Solicitation of a Bribe by Internal Revenue Service Employees

9.5.11.2.3 Attempted Bribery

9.5.11.2.3.1 Attempted Bribery during the Execution of a Search or Arrest Warrant

9.5.11.2.3.2 Attempted Bribery in Grand Jury Investigations

9.5.11.2.4 Prohibition on Executive Branch Influence Over Taxpayer Audits and Other Investigations

9.5.11.3 Forcible Rescue of Seized Property

9.5.11.3.1 Forcible Rescue

9.5.11.3.1.1 Rescue of Seized Property

9.5.11.3.2 Forcible Rescue Investigations

9.5.11.3.2.1 Corrupt or Forcible Interference

9.5.11.3.2.2 Assault, Resisting, or Impeding Certain Officers or Employees

9.5.11.3.2.3 Investigative Responsibility

9.5.11.3.2.4 Reporting the Incident

9.5.11.3.2.5 Reporting Assaults, Threats, or Forcible Interference Against Service Employees

9.5.11.3.2.6 Interference Investigations

9.5.11.3.2.7 Potentially Dangerous Taxpayer System

9.5.11.4 Offers in Compromise

9.5.11.4.1 Criminal Investigation Responsibility

9.5.11.4.2 Alleged Fraudulent Offers

9.5.11.4.3 Offers in Compromise in Closed Criminal Investigations

9.5.11.4.4 Offers in Compromise Made in Pending Criminal Investigations

9.5.11.4.5 Offers in Compromise Reports

9.5.11.5 Wagering

-
- 9.5.11.5.1 Coordination With The United States Attorney
 - 9.5.11.5.2 Civil Wagering Taxes And Penalties
 - 9.5.11.5.2.1 Wagering Excise Tax
 - 9.5.11.5.2.1.1 Definitions of Wagering Terms
 - 9.5.11.5.2.1.2 Elements of Wagering Tax Violations
 - 9.5.11.5.2.1.3 Amount of Wager
 - 9.5.11.5.2.1.4 Persons Liable for Wagering Excise Tax
 - 9.5.11.5.2.1.5 Exclusions From Wagering Excise Tax
 - 9.5.11.5.2.1.6 Territorial Extent of Wagering Excise Tax
 - 9.5.11.5.2.2 Wagering Special Tax
 - 9.5.11.5.2.3 Wagering Registration
 - 9.5.11.5.3 Civil Fraud Penalties
 - 9.5.11.5.4 Processing Wagering Tax Information
 - 9.5.11.5.5 Criminal Investigations of Wagering Excise Statutes
 - 9.5.11.5.6 Venue and Statute of Limitations on Wagering Taxes
 - 9.5.11.5.7 Investigative Techniques Used in Wagering Investigations
 - 9.5.11.6 Excise Tax
 - 9.5.11.6.1 Excise and Income Taxes Distinguished
 - 9.5.11.6.1.1 Tax Period
 - 9.5.11.6.1.2 Additional Taxes and Penalties
 - 9.5.11.6.1.3 Court Appeals
 - 9.5.11.6.2 Excise Tax Categories
 - 9.5.11.6.3 Excise Tax Investigations
 - 9.5.11.6.4 Techniques of Excise and Income Tax Investigations Compared
 - 9.5.11.6.5 Jeopardy Assessment in Excise Tax Investigations
 - 9.5.11.6.6 Criminal Penalties for Excise Tax Violations
 - 9.5.11.7 Collateral Investigations
 - 9.5.11.8 Probation Revocation Investigations
 - 9.5.11.9 Voluntary Disclosure Practice
 - 9.5.11.9.1 Voluntary Disclosure Process
 - 9.5.11.9.2 Designated Criminal Investigation Employees
 - 9.5.11.9.3 Responding to Taxpayer Inquiries
 - 9.5.11.9.4 Disqualifying Factors
 - 9.5.11.9.5 Evaluating the Disclosure
 - 9.5.11.9.6 Transmitting the Voluntary Disclosure to SB/SE or LB&I Offshore Identification Unit
 - 9.5.11.9.7 Revocation of Voluntary Disclosure
 - 9.5.11.9.8 Record Keeping
 - 9.5.11.10 Armed Escort Assignment
 - 9.5.11.10.1 Armed Guard Assignment

-
- 9.5.11.10.2 Armed Escort Assignment Considerations
 - 9.5.11.10.3 Understanding Role
 - 9.5.11.10.3.1 Resistance Encountered
 - 9.5.11.10.3.2 Threat
 - 9.5.11.10.3.3 Physical Attack
 - 9.5.11.11 Protection and Maintenance of Informants and Witnesses
 - 9.5.11.11.1 Department of Justice Protection
 - 9.5.11.11.2 Confidential Expenditures for Protection
 - 9.5.11.11.3 Emergency Protection
 - 9.5.11.11.4 Investigations under Jurisdiction of the United States Attorney
 - 9.5.11.11.4.1 Risk Assessment Report
 - 9.5.11.11.4.2 Threat Assessment Report
 - 9.5.11.11.4.3 Prisoner Witnesses
 - 9.5.11.11.4.4 Probationers and Parolees
 - 9.5.11.11.5 Informant/Witness Qualifies for Department of Justice Witness Security Program
 - 9.5.11.11.6 Investigations Not Under Jurisdiction of the United States Attorney
 - 9.5.11.11.6.1 Risk Assessment Report
 - 9.5.11.11.6.2 Threat Assessment Report
 - 9.5.11.11.7 Protective Arrangements When not Qualified for the Witness Security Program
 - 9.5.11.11.8 Protected Informant or Witness Conference
 - 9.5.11.11.9 Victim/Witness Assistance
 - 9.5.11.11.9.1 Use in Criminal Investigation
 - 9.5.11.11.9.2 Joint Responsibility
 - 9.5.11.11.9.3 Recordkeeping Requirements
 - 9.5.11.11.9.4 Victim/Witness Protection Coordinator

9.5.11.1
(02-06-2024)
Program Scope and Objectives

- (1) Purpose: This section details investigations categorized as “other specialized investigations”. The topics outlined in this section are:
 - Bribery & Undue Influence,
 - Forcible Rescue of Seized Property,
 - Offers In Compromise,
 - Wagering,
 - Excise Tax,
 - Collateral Investigations,
 - Probation Revocation Investigations,
 - Voluntary Disclosure Practice,
 - Armed Escorts Assignments,
 - Protection and Maintenance of Informants and Witnesses.
- (2) Audience: All Criminal Investigation (CI) employees.
- (3) Policy Owner: Director, Global Financial Crimes & Policy.
- (4) Program Owner: Director, Global Financial Crimes & Policy.
- (5) Primary Stakeholders: All CI employees.
- (6) Contact Information: To recommend changes to this IRM section, contact the Financial Crimes office by emailing CIHQIRM@ci.irs.gov.
- (7) Goal: To discuss different types of investigations IRS CI investigates.

9.5.11.1.1
(02-06-2024)
Background

- (1) The authority to enforce Federal laws is derived from a variety of statutes. These statutes may assign the enforcement of any given law to a particular department such as the Treasury Department, an agency of a department such as the Internal Revenue Service (IRS), or simply that the enforcement falls to the legal arm of the government, the Department of Justice (DOJ).
- (2) Criminal Investigation has Operational and Investigative Strategies. Criminal Investigation’s strategies are classified in terms of:
 - Initiatives in which CI participates.
 - Priorities within the program area.
 - Schemes encountered in the program areas.
 - Other situations to which the special agent should be sensitive when conducting an investigation.

9.5.11.1.2
(02-06-2024)
Authority

- (1) See IRM 9.1.2, Authority for the delegated authority relating to IRM 9.5.11, Other Investigations.

9.5.11.1.3
(02-06-2024)
Roles and Responsibilities

- (1) The Director, Global Financial Crimes & Policy is 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.

9.5.11.1.4
(02-06-2024)

**Program Management
and Review**

- (1) The Director, Global Financial Crimes & Policy will:
- Review the IRM annually.
 - Update the 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.
 - Incorporate all permanent interim content into the next revision of the IRM section prior to the expiration date.

9.5.11.1.5
(02-06-2024)

Program Controls

- (1) The Director, Global Financial Crimes & Policy will review the instructions and guidelines relating to the investigation of tax returns and other IRS documents for procedural, operational, and editorial changes.

9.5.11.1.6
(02-06-2024)

Acronyms

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

Term/ Acronym	Definition
ATF	Bureau of Alcohol, Tobacco and Firearms
CI	Criminal Investigation
CI-HQ-GO	Criminal Investigation Headquarters Global Operations
CIMIS	Criminal Investigation Management Information System
CT	Criminal Tax
DFO	Director, Field Operations
DOJ	Department of Justice
DOJ-OEO	Department of Justice Office of Enforcement Operations
DPC	Data Processing Center
EIN	Employer Identification Number
FBI	Federal Bureau of Investigation
FinCEN	Financial Crimes Enforcement Network
IDEA	Investigation Data Examination Application
IDRS	Integrated Data Retrieval System
IRS	Internal Revenue Service
JUST	Justice Telecommunications System
LB&I	Large Business and International
MOU	Memorandum of Understanding
NCIC	National Crime Information Center

OCR	optical character recognition
OIC	Offer In Compromise
PDT	Potentially Dangerous Taxpayer
SA	Special Agent
SAC	Special Agent in Charge
SB/SE	Small Business/Self-Employed
SOC	Sub-Object Class Code
SSA	Supervisory Special Agent
SSN	Social Security Number
TD	Treasury Directive
TECS	Treasury Enforcement Communications System
TIGTA	Treasury Inspector General for Tax Administration
TIGTA-OI	Treasury Inspector General for Tax Administration Office of Investigations
TIPRA	Tax Increase Prevention and Reconciliation Act of 2005
USAO	U.S. Attorney's Office
USC	United States Code
VDAC	Voluntary Disclosure Analytic Capability
WSC	Witness Security Coordinator

9.5.11.1.7
(02-06-2024)

Terms and Definitions

- (1) For the purpose of these guidelines and procedures on protection, the following terms are defined:
 - a. **Witness** - Any person who has testified in a judicial proceeding or any person who will clearly become a witness before a Federal Grand Jury or at a trial. When it is not clear that a person will be used as a witness, he/she will have the same status as an informant.
 - b. **Informant** - Any person who supplies the IRS with information regarding violations of the tax laws and related offenses, and such information is being acted upon by the IRS.
 - c. **Informant/Witness** - Any person who is already a witness in one investigation but continues to be an informant in another investigation.
 - d. **Risk Assessment Report** - The possible danger to other persons or property in the relocation area from the informant or witness or any relocated family member or close associate of the witness or informant, being placed in the program. See below for the information to be included in the Risk Assessment Report.
 - e. **Threat Assessment Report** - The possible danger to the witness or informant, as well as members of his/her family or household and/or his/her close associates, because of his/her cooperation in the government's investigation. See below for the information to be included in the Threat

Assessment Report when the investigation is under the jurisdiction of the US Attorney, or is not under the jurisdiction of the US Attorney.

- f. **Under the Jurisdiction of the US Attorney** - When the US Attorney's Office is involved in an investigation or has become responsible for the prosecution of an investigation, informant and witness protection responsibilities will then fall under the jurisdiction of the US Attorney. In addition, when CI is submitting a DOJ Witness Security Program request, Department of Justice-Office of Enforcement Operations (DOJ-OEO) policy still requires that the US Attorney's Office be a referring agency. Refer below for procedures to request authorization to place an individual in the DOJ Witness Security Program.
- g. **Not under the Jurisdiction of the US Attorney** - CI has the sole responsibility for providing protection for a witness or informant in certain circumstances. These circumstances arise when there exists an immediate danger to the witness or informant, the witness or informant refuses protection under the DOJ Witness Security Program, or the witness or informant does not qualify for protection under the DOJ Witness Security Program.

9.5.11.1.8
(02-06-2024)

Related Resources

- (1) IRM 1.16.9, Physical Security Program - Occupant Emergency Plan.
- (2) IRM 5.8, Offer in Compromise.
- (3) IRM 8.23, Offer in Compromise.
- (4) IRM 9.1.3, Criminal Statutory Provisions and Common Law.
- (5) IRM 9.3.1, Disclosure.
- (6) IRM 9.4.1, Investigation Initiation.
- (7) IRM 9.4.9, Search Warrants, Evidence, and Chain of Custody.
- (8) IRM 9.4.12, Arrests.
- (9) IRM 9.5.2, Grand Jury Investigations.
- (10) IRM 9.5.13, Civil Considerations.
- (11) IRM 9.7, Asset Seizure and Forfeiture.
- (12) IRM 9.11.1, Fiscal and Budgetary Matters.
- (13) IRM 20.1.2, Failure to File/Failure to Pay Penalties.
- (14) IRM 25.5, Summons.
- (15) Field office resources including Investigative Analysts (IA), Tax Fraud Investigative Assistants (TFIA), and Compliance Support Assistants (CSA).

9.5.11.2
(09-09-2004)

Bribery & Undue Influence

- (1) Soliciting information or influencing an IRS employee in his/her official capacity is explicitly prohibited by statute. This section discusses investigations of bribery and investigations of Executive Branch employees who try to influence the action of IRS employees.

9.5.11.2.1
(09-09-2004)
**Elements of Offer to
Bribe**

- (1) The principal elements of a bribe are: promising, offering, or giving of a thing of value to an officer or an employee of the United States, or anyone acting on behalf thereof, for the purpose of influencing his/her official conduct.
- (2) To “offer” and to “give” a bribe are distinct crimes even when part of a single transaction. The test of whether a single transaction includes distinct offenses of offering and of giving a bribe is whether the separate acts have been committed with the requisite criminal intent.
- (3) Regardless of the occasion, the statute is violated when a bribe is given or an offer of a bribe is made and the acceptor or offeree of the bribe is a person described in the statute.

9.5.11.2.2
(09-09-2004)
**Investigation of
Attempted Bribery or
Solicitation of a Bribe by
Internal Revenue Service
Employees**

- (1) The Treasury Inspector General for Tax Administration (TIGTA) and the Federal Bureau of Investigation (FBI) investigate allegations of bribery, including attempted bribery of IRS employees and investigations where IRS employees are suspected of soliciting or receiving bribes. Investigative authority also includes investigations where non-IRS personnel are alleged to have solicited or received bribes while employed by the IRS.
- (2) The Treasury Inspector General for Tax Administration investigates all charges of attempted bribery of IRS employees.
- (3) The Treasury Inspector General for Tax Administration should notify Criminal Investigation (CI) of any attempt to bribe IRS personnel when the bribe attempt may have tax related issues within CI jurisdiction. This notification will be done when TIGTA determines that the tax investigation or other action by CI will not interfere with or affect the investigation of the attempted bribery.
- (4) When there has been an allegation of an acceptance of a bribe, CI may work a joint investigation with TIGTA by inquiring into the attempted evasion of income tax as to the amount of bribe received and any other possible tax violations that pertain to the alleged bribe.

9.5.11.2.3
(09-09-2004)
Attempted Bribery

- (1) Except when executing search and/or arrest warrants, when a special agent is offered a bribe, or believes that an offer will be made, he/she shall:
 - a. Attempt to hold the matter in abeyance by avoiding any statement or implication about whether or not he/she will accept the bribe,
 - b. Immediately report the matter, by telephone, to TIGTA and to his/her Supervisory Special Agent (SSA),
 - c. Submit, as soon as possible, a memorandum to TIGTA detailing the full circumstances concerning the matter; the special agent will route the memorandum as directed by TIGTA or his/her representative on a case-by-case basis,
 - d. Avoid any unnecessary discussion of the investigation and cooperate with TIGTA in the investigation.

9.5.11.2.3.1
(02-06-2024)
**Attempted Bribery
during the Execution of
a Search or Arrest
Warrant**

- (1) If a bribe offer occurs during the execution of a search or arrest warrant, the special agent should prepare a sworn statement as to what was said by the offerer. The special agent should establish, from the words and conduct of the offerer, that his/her intent was that of offering a bribe to a special agent. The special agent should be able to testify about the conduct of the parties, his/her conversations, and any transactions that took place.

- (2) If during an arrest the bribe offer is made by someone other than the person under arrest, the individual making the offer should also be placed under arrest and charged with offering a bribe.
- (3) If the offer is made by someone already under arrest, additional charges for offering the bribe should be recommended against that individual.
- (4) If money has been handed to the special agent, he/she should make a list of the serial numbers and denominations in the presence of at least one other special agent and note any other distinguishing features.
 - a. The special agent should then put the money in an envelope or in some other suitable container and seal it in a way that the seal will have to be broken to get to the contents.
 - b. The special agent should take the container to the Asset Forfeiture Coordinator for safekeeping.
 - c. The cashier or cashier's representative must keep the container in the exact condition in which it was received.
 - d. The special agent should explain the chain of custody procedure to the cashier or cashier's representative so the chain of custody will be preserved.
- (5) If currency and/or other valuables have been passed on to the special agent, the special agent should adhere to proper evidentiary procedures.
- (6) Criminal Investigation will notify TIGTA of the bribe offer as soon as possible.

9.5.11.2.3.2
(09-09-2004)
**Attempted Bribery in
Grand Jury
Investigations**

- (1) If an allegation or overture of bribery is made during a grand jury investigation, CI will inform TIGTA of the allegation or overture as well as the name of the attorney for the government assigned to the investigation.
- (2) The information provided in the initial report should be limited to the information detailed above in subsection 9.5.11.2.3.1, Attempted Bribery During the Execution of a Search or Arrest Warrant.
- (3) Criminal Investigation will inform the attorney for the government of the incident and relate that the matter has been reported to TIGTA.
- (4) The Treasury Inspector General for Tax Administration will contact the attorney for the government regarding the allegation or overture. Any subsequent investigation by TIGTA will be coordinated with the attorney for the government and CI.

9.5.11.2.4
(09-09-2004)
**Prohibition on Executive
Branch Influence Over
Taxpayer Audits and
Other Investigations**

- (1) Title 26 USC 7217 makes it unlawful for any person to request an IRS employee to conduct or terminate an audit or investigation. The prohibition applies to both direct requests and requests made through an intermediary. As there are limited exceptions to this prohibition, each request must be evaluated individually. Any employee receiving any such request shall report the incident to TIGTA.

9.5.11.3
(09-09-2004)
**Forcible Rescue of
Seized Property**

- (1) Criminal Investigation has the responsibility for conducting investigations involving forcible rescue or dispossession of property seized under the Internal Revenue laws, except property seized by the Bureau of Alcohol, Tobacco and Firearms (ATF).

- (2) Theft of government property, including seized property which has been adjudicated as government property and seized property which has been turned over to the US Marshal Service in a libel proceeding, falls within the jurisdiction of the Federal Bureau of Investigation.

9.5.11.3.1
(09-09-2004)
Forcible Rescue

- (1) The essential elements of 26 USC 7212(b) are:
 - a. Forcible rescue or attempt to forcibly rescue,
 - b. Property that was validly seized pursuant to 26 USC.

9.5.11.3.1.1
(09-09-2004)
Rescue of Seized Property

- (1) The essential elements of 18 USC 2233 are:
 - a. Forcible rescue or dispossession or an attempt to forcibly rescue or dispossess,
 - b. Property taken, detained, or seized under authority of a revenue law of the United States or by any person authorized to make searches and seizures.
- (2) A rescue of seized property prosecution recommendation may be made if:
 - a. There has been a seizure, levy, or other taking, which is sufficient to put the individual on notice that the property is under process of seizure for taxes.
 - b. There is a retaking by physical force, stealth, or in any other manner, that indicates a willful defiance of the legal process.

9.5.11.3.2
(09-09-2004)
Forcible Rescue Investigations

- (1) Investigations interpreting forcible rescue under both 26 USC 7212(b) and 18 USC 2233 permit prosecution against any individual who rescues or dispossesses, or attempts to rescue or dispossess, property of which the government has taken legal possession.
- (2) By current practice, determination of whether an alleged forcible rescue is to be investigated by CI or the FBI depends on whether the property was taken before or after it was adjudicated government property. Before undertaking an investigation, the special agent should first determine if it is to be handled by CI, as set forth above in subsection 9.5.11.3, Forcible Rescue of Seized Property.
- (3) If the investigation is within CI jurisdiction, the special agent should initially determine whether the property had been validly seized under the USC, and then determine whether it was forcibly rescued or an attempt to forcibly rescue had been made.
- (4) The underlying seizure must be valid on its face before it can be considered a forcible rescue investigation under 18 USC 2233 or 26 USC 7212(b). A seizure valid on its face will generally support a rescue conviction even if the seizure could be invalidated by a court. During a forcible rescue it should be shown the person retaking the property had knowledge of the valid seizure or of the fact the property was in the possession of the government. It is not a defense that the person retaking the property claims to be the real owner or claims the property was seized by mistake. A person's remedy is judicial, not self-help.
- (5) To determine whether the property has been validly seized:

- a. Examine the file relating to the seizure and obtain certified copies of all the documents that give legal basis to the seizure.
 - b. Interview all officers, employees, or other persons that have knowledge of the circumstances that led up to the seizure and/or those that relate to the actual seizure.
 - c. Establish that a notice of seizure was attached to the property.
- (6) “Forcible” does not necessarily mean actual physical violence to an officer. It includes threatening language and/or conduct intended to intimidate the revenue officer to make him/her stop the performance of his/her official duty. It has been held that a forcible rescue under 26 USC 7212(b) includes the use of force against property, such as the breaking of a bank window, the removal of the IRS seal on a safe deposit box, and the removal of the box and its contents from the bank.
- (7) To determine whether there has been a forcible rescue or an attempted forcible rescue, the special agent should:
- a. Interview all individuals who witnessed the incident to determine the facts that led up to and pertain to the actual seizure and whether any threatening language, as well as a description of any menacing gestures, instruments, or weapons were used during the forcible rescue.
 - b. Obtain any instruments or weapons used by the assailant and get the names and addresses of witnesses who can identify them.
 - c. Establish what knowledge the subject had that the property was under seizure when the forcible rescue was committed or attempted (see IRM 9.4.12, Arrests).

9.5.11.3.2.1
(09-09-2004)
**Corrupt or Forcible
Interference**

- (1) The elements essential to constitute an offense under this section are: corruptly, or by force, or threats of force (including any threatening letter or communication), endeavored to impede or obstruct the due administration of the Internal Revenue laws.
- (2) This section provides for the punishment of threats or threatening acts against agents of the IRS, officers or employees of the United States and/or members of the families of such persons due to the performance by such agents or officers or employees of his/her official duties.
- (3) The Conference Committee’s Report (House and Senate) states that: “Subsection (a) of 26 USC 7212 is broader than 18 USC 111, relating to persons assaulting, resisting, or impeding certain officers or employees of the United States while engaged in the performance of their official duties, in that 26 USC 7212(a) covers force or threats of force (including any threatening letter or communication) or corrupt solicitation. Threats of force have been defined as meaning threats of bodily harm to the officer or employee of the United States or members of the families of such persons, on account of the performance by such agents or officers or employees of their official duties.”
- (4) “Corruptly” refers to an attempt to influence any official in his/her official capacity under this title by any improper inducement. For example, an offer of a bribe or a passing of a bribe to an IRS employee for the purpose of influencing the performance of his/her official duties is corrupt interference with the administration of Federal laws.

9.5.11.3.2.2
(09-09-2004)
**Assault, Resisting, or
Impeding Certain
Officers or Employees**

- (1) Although there is some overlap between 18 USC 111 and 26 USC 7212(a), the latter is broader because it includes the use of force or threats of bodily harm against an officer or employee of the United States acting in his/her official capacity under the Internal Revenue laws and/or any member of his/her family.
- (2) Under 26 USC 7212(a) a threat of force is chargeable only as a misdemeanor even if it consists of pointing a rifle at the agent.
- (3) Title 18 USC 111 makes it an offense to assault, resist, oppose, impede, intimidate, or interfere with officers or employees designated under 18 USC 1114 (including IRS employees), and provides a much more severe punishment when the act is committed with a deadly or dangerous weapon.
- (4) Investigations under 18 USC 111 have not required proof of knowledge of the official capacity of the person assaulted.

9.5.11.3.2.3
(09-09-2004)
**Investigative
Responsibility**

- (1) The Treasury Inspector General for Tax Administration has primary responsibility over 26 USC 7212(a) allegations which involve broad-based, systemic attempts to corruptly interfere with or impede tax administration generally, and/or any actions designed to harass IRS employees or interfere with activities or functions of IRS personnel. This could include the filing harassing liens designed to intimidate, influence, tamper with, or retaliate against IRS employees and his/her family, or other related persons such as witnesses and informants, as well as the filing of fictitious Forms 8300 on public officials not directly involved in tax administration. Also included are acts which collectively constitute a broad-based, systematic attempt to corruptly interfere with or impede tax administration generally, as opposed to a substantive tax offense.
- (2) Criminal Investigation has investigative responsibility over 26 USC 7212(a) corrupt interference allegations that involve substantive tax violations of non-employees or interference with the activities within the responsibility of CI. Criminal Investigation also has investigative responsibility for forcible rescues under 26 USC 7212(b).
- (3) There are instances in which jurisdictional overlap may occur between TIGTA and CI. In these instances, it is essential that TIGTA and CI management communicate effectively in order to avoid the duplication of investigative efforts and facilitate joint investigations when appropriate.
- (4) All reports of assaults or threats against IRS employees must be forwarded directly to or through appropriate supervisory channels to TIGTA.
- (5) Criminal Investigation will assist TIGTA in urgent or emergency situations. The Treasury Inspector General Tax Administration will evaluate the situation. If it is determined that the deployment of TIGTA personnel is not required, TIGTA may request assistance from CI to conduct the investigation of the alleged threat or assault and will be provided with a copy of the investigative report.
- (6) In emergency forcible interference situations where an employee is in imminent danger of physical harm, CI will respond immediately.
- (7) When an assault or threat occurs in the course of an armed escort or during execution of search, seizure, or arrests warrants, CI may take appropriate enforcement action, such as placing the attacker under arrest. Criminal Investigation will promptly notify TIGTA and provide documentation concerning the incident and the action taken. The Treasury Inspector General Tax Adminis-

tration will determine what investigation by TIGTA is warranted and will initiate appropriate processing of Potentially Dangerous Taxpayer (PDT) determinations.

9.5.11.3.2.4
(09-09-2004)

Reporting the Incident

- (1) When an employee believes he/she has been assaulted, threatened, or harassed, the employee should personally visit or telephone the servicing TIGTA office as soon as practicable to report the circumstances of the incident. The employee should furnish the taxpayer's full name and Social Security Number (SSN) and Employer Identification Number (EIN), if appropriate.

9.5.11.3.2.5
(09-09-2004)

Reporting Assaults, Threats, or Forcible Interference Against Service Employees

- (1) Employees must report to TIGTA all assaults, threats, or forcible interference against them in the course of his/her official duties and all assaults or threats against members of his/her family when made to impede the performance of the employee's official duties.
- (2) Employees should report these incidents by telephone or in person to his/her local TIGTA office as soon as possible after they occur.

9.5.11.3.2.6
(09-09-2004)

Interference Investigations

- (1) Interference investigations may arise quite suddenly during a seizure or some other enforcement, levy, or collection action. The information pertaining to the incident will be promptly reported directly to the SSA and the Special Agent in Charge (SAC). The SAC will continue to monitor the investigation because of the hazard posed to the investigating officer and because of the impact these investigations have on the enforcement system of the IRS.
- (2) Criminal Investigation is responsible for investigating instances of interference when there is no threat or assault. However, when an assault or threat occurs in the course of a CI armed escort assignment or during the execution of a search, seizure or arrest warrant, CI may take appropriate enforcement action, such as placing the attacker under arrest. Criminal Investigation will promptly notify TIGTA and provide documentation concerning the incident and the action taken.
- (3) The Treasury Inspector General Tax Administration has the primary responsibility to investigate instances involving assaults upon and threats to IRS employees. The Treasury Inspector General Tax Administration will determine what investigation by TIGTA is warranted and will initiate appropriate processing of the PDT.
- (4) The special agents will fully cooperate with TIGTA and furnish all pertinent information. The special agent should prepare a comprehensive memorandum of activity and diagram, photograph, or videotape the premises where the assault, menacing gestures, and/or threatening language occurred.

9.5.11.3.2.7
(09-09-2004)

Potentially Dangerous Taxpayer System

- (1) The PDT identifies taxpayers who pose a threat to the safety of IRS employees and his/her family when the employee's official duties may require personal contact with such taxpayer.
- (2) The Treasury Inspector General for Tax Administration is responsible for conducting PDT investigations and forwarding the investigative finding to the IRS Office of Employee Protection.
- (3) The IRS Office of Employee Protection is responsible for the management and administration of the PDT database. The IRS Office of Employee Protection is

located in Detroit and is under the direction of Small Business/Self-Employed (SB/SE) Director of Compliance Area 6. The Director of Compliance Area 6 makes all PDT determinations after reviewing TIGTA's investigative reports.

- (4) If a local IRS executive does not concur with the Director of Compliance's determination, the matter is referred to General Legal Services for reconsideration. General Legal Services is responsible for making the final determination.

9.5.11.4
(02-06-2024)
Offers in Compromise

- (1) An accepted Offer in Compromise (OIC) is a legally binding agreement between the Service and a taxpayer and is enforceable by either party. The Service, like any business, encounters situations where an account receivable cannot be collected in full or there is a dispute regarding what is owed. It is accepted business practice to resolve collection and liability issues through compromise. The laws relating to Offers in Compromise are set forth in Title 26 USC 7121, Title 26 USC 7122, Title 26 USC 7123, and Title 26 USC 7206(5). An OIC overview and procedural guidance may be found in IRMs 5.8 and 8.23, Offer in Compromise. Guidance specific to indicators of taxpayer fraud as it relates to OIC may be found in IRM 5.8.12, Independent Administrative Review.

9.5.11.4.1
(02-06-2024)
**Criminal Investigation
Responsibility**

- (1) Criminal Investigation's responsibility regarding OIC pertain to offers with the following factors:
 - a. Offers containing false or fraudulent representations,
 - b. Offers involving joint investigations by CI with other IRS operating divisions in which the criminal aspects have been completed,
 - c. Offers made while criminal proceedings are pending.
- (2) Special agents should acquaint themselves with the contents of the sections of the USC dealing with offers in compromise and the pertinent sections of IRM 8.23, Offers in Compromise.

9.5.11.4.2
(11-01-2011)
**Alleged Fraudulent
Offers**

- (1) An allegation involving a potentially fraudulent OIC may be referred to CI by an IRS civil operating division. This referral may be made using established fraud referral procedures once indications of fraud have been identified regarding a false representation of a material matter made in or in connection with an OIC.
- (2) The concealment of income and/or property, false and/or intentional misstatements, or falsifying and/or destroying records in connection with any OIC may result in criminal penalties.
- (3) The principal elements of fraudulent OIC are the willful:
 - a. Concealing from any officer or employee of the United States any property belonging to the taxpayer, estate of a taxpayer or any other person liable in respect to the tax due,
 - b. Receiving, withholding, destroying, mutilating, or falsifying any book, document, or record of the taxpayer or any other person liable in respect to the tax due,
 - c. Making a false statement relating to the estate or financial condition of the taxpayer or other person liable in respect to the tax due.
- (4) Criminal Investigation will investigate, report, and process OIC related fraud referrals in the same manner as other tax-related fraud referral investigations

(see subsection 9.5.11.4.5, OIC Reports and IRM 5.8.4, Investigation). The customary standard for establishing willfulness and intent are applicable for OIC fraud related tax investigations. The standard for these elements and the applicable criminal statutory provisions are set forth in IRM 9.1.3, Criminal Statutory Provisions and Common Law.

Note: Special agents must be cognizant that the Tax Increase Prevention and Reconciliation Act of 2005 (TIPRA) law includes a provision for automatic acceptance of an Offer in Compromise, if a decision has not been reached within 24 months of receipt of the OIC. IRS can no longer hold OICs open indefinitely pending a decision regarding the potential criminal investigation.

- (5) Investigations of concealment involve identifying all assets belonging to the subject or to any other person liable in respect to the tax due.
- (6) Investigations involving the receipt, withholding, destruction, mutilation, or falsification of any book, document, or record are investigated in the same manner as any other tax fraud investigation by gathering evidence to document the commission of the fraudulent act, that the act was committed willfully, and with the intent to defraud the government.
- (7) The techniques used to investigate fraudulent OIC are similar to those used in investigations involving violations of Title 18 USC 1001, False Statements and Title 18 USC 1621, Perjury.

9.5.11.4.3
(11-01-2011)

**Offers in Compromise in
Closed Criminal
Investigations**

- (1) Offers in Compromise involving joint investigations with other IRS operating divisions in which the criminal aspects have been completed will be examined solely by the responsible operating division. Except as noted in paragraph 2 below, the Territory Manager of the civil operating division will, after completion of the examination, refer the entire file to the SAC for concurrence or comment when all of the following conditions exist:
 - a. A civil fraud penalty or negligence penalty are involved,
 - b. The offer involves an investigation in which the special agent has written a final prosecution report and recommended the assertion of a civil fraud penalty,
 - c. The civil operating division contemplates recommending acceptance of the offer.
- (2) If the sole issue presented in the OIC is the ability to pay, a fraud referral to CI will not be made.
- (3) The SAC should indicate his/her concurrence with the recommended disposition of the OIC by memorandum and return the entire file to the civil operating division for processing.
- (4) If the SAC does not concur and no agreement can be reached with the civil operating division as to the disposition of the OIC, the matter should be elevated to the Director, Field Operations and the respective operating division's Area Director to resolve any differences.

- 9.5.11.4.4
(02-06-2024)
**Offers in Compromise
Made in Pending
Criminal Investigations**
- (1) If a Special Agent (SA) or Supervisory Special Agent (SSA) is contacted regarding the submission of an OIC on an open criminal investigation, the SSA should discuss the matter with the Fraud Technical Advisor, civil manager, and CT Counsel to appropriately balance the civil and criminal aspects of the case. A determination must be made regarding how to best proceed and whether or not a referral is warranted or if parallel proceedings should ensue.
 - (2) Special agents must be cognizant that the Tax Increase Prevention and Reconciliation Act of 2005 (TIPRA) law includes a provision for automatic acceptance of an Offer in Compromise, if a decision has not been reached within 24 months of receipt of the OIC. IRS can no longer hold OICs open indefinitely pending a decision regarding the potential criminal investigation (see IRM 5.8.4, Investigation).
- 9.5.11.4.5
(11-01-2011)
**Offers in Compromise
Reports**
- (1) Reports relating to OIC in joint investigations, in which the criminal aspects have been closed and the SAC concurs with the disposition recommended by the civil operating division, will be returned to the referring division along with a memorandum of concurrence for further processing.
 - (2) If the SAC does not concur with the recommended disposition of the OIC from the referring division and an agreement cannot be reached, the report will be forwarded along with a memorandum outlining the issues to the Director, Field Operations for resolution.
- 9.5.11.5
(02-06-2024)
Wagering
- (1) Each SAC is responsible for identifying noncompliance in the wagering tax area.
 - (2) The SAC shall maintain liaison with local and state law enforcement officials to keep current with wagering enforcement problems in his/her field office and to identify violators who warrant action by CI. In all such contacts, IRS personnel shall adhere to existing disclosure provisions; particularly, 26 USC 4424 and 26 USC 6103 (see IRM 9.3.1, Disclosure).
 - (3) Because of limited resources, CI will focus its primary enforcement efforts at independent initiation and development of investigations against important operators and situations involving widespread noncompliance. Investigations developed by local and state authorities will not be adopted for criminal investigation unless they present instances of flagrancy or situations where there is high potential.
 - (4) Information, which lacks criminal potential for CI, will be referred to Small Business/Self Employed (SB/SE) Compliance Programs for further screening for possible civil tax collection potential.
 - (5) There are special disclosure restrictions regarding wagering investigations (see IRM 9.3.1, Disclosure).
- 9.5.11.5.1
(11-01-2011)
**Coordination With The
United States Attorney**
- (1) Department of Justice, Tax Division has taken the position that wagering excise or occupational tax investigations are not generally high priority investigations. The SAC will meet with the United States or Strike Force Attorney to discuss these types of wagering tax investigations to determine if they are prosecutable under DOJ, Tax Division standards. Disclosure of information for this purpose is permissible under 26 USC 4424.

- (2) The attorney for the government should be informed that any information gleaned from data subject to 26 USC 4424 must be used only for the administration or civil or criminal enforcement of the USC, and that such information may not be used for intelligence or prosecutorial purposes such as the enforcement of gambling offenses set forth in Titles 18, 26, and 31 (not all inclusive) of the USC or any other non-tax administration purpose.

9.5.11.5.2
(09-09-2004)
**Civil Wagering Taxes
And Penalties**

- (1) Wagering taxes include three types of “excise taxes.” The applicable taxes are:
- a. Wagering excise tax (26 USC 4401) — applicable to the acceptor of wagers (principal),
 - b. Special tax (26 USC 4411) — applies to both the acceptor and the receiver of wagers (agent),
 - c. Wagering registration (26 USC 4412) on Form 11C is required of anyone who has to pay the special tax.

9.5.11.5.2.1
(09-09-2004)
Wagering Excise Tax

- (1) Title 26 USC 4401 imposes an excise tax on wagers. The excise tax on wagers authorized under state law was reduced to 0.25 percent. The excise tax on wagers that are not authorized under state law remains at 2 percent. Where both authorized and unauthorized wagers are involved, the 0.25 percent rate will apply only to those wagers which are authorized under state law. The remaining (or unauthorized) wagers will be taxed at 2 percent.
- (2) The wagering excise tax (26 USC 4401) is applicable to the acceptor of wagers (principal) while the special tax (26 USC 4411) applies to both the acceptor and the receiver of wagers (agent). In addition, pursuant to 26 USC 4401(c), an individual may become liable for the excise tax in the event that he/she is liable for the special tax, as an agent for a principle, and fails to disclose the identity of his/her principle. Title 26 USC 4412 provides that each person required to pay a special tax under 26 USC 4411 shall register with the designated IRS official in charge of the IRS territory office where the wagering business is conducted. Form 11C is used for the registration.

9.5.11.5.2.1.1
(11-01-2011)
**Definitions of Wagering
Terms**

- (1) Wager—The term “wager” means any wager with respect to a sports event or a contest placed with a person engaged in the business of accepting such wagers; any wager placed in a wagering pool with respect to a sports event or a contest, if such pool is conducted for profit; and any wager placed in a lottery conducted for profit.
- (2) Lottery—The term “lottery” includes the numbers game, policy, and similar types of wagering. The term does not include:
- a. Any game of the type in which the wagers are placed, the winners are determined, and the distribution of prizes or other property is made in the presence of all persons placing wagers,
 - b. Any drawing conducted by an organization exempt from tax under 26 USC 501 and 26 USC 521, if no part of the net proceeds derived from such drawing is a benefit to any private shareholder or individual.

9.5.11.5.2.1.2
(09-09-2004)
**Elements of Wagering
Tax Violations**

- (1) The elements of a wagering tax violation subject to criminal sanctions under 26 USC 7203 are:
- a. The wagering activity must be subject to the wagering tax laws (26 USC 4421),

- b. Failure of the person to register and pay the special tax before accepting the wager and/or failure of the person to file wagering excise tax returns and pay tax,
 - c. Evidence to prove that the person willfully failed to comply with the law.
- (2) In addition to proving the above elements, the government must prove affirmative acts that indicate a willful intent to evade or defeat the tax in order to sustain a violation of 26 USC 7201.
- (3) Proof of willfulness is not required for a violation under 26 USC 7262, which provides a \$1,000 to \$5,000 fine for any wagering activity whereby a person's liable for the special tax but fails to pay it.

9.5.11.5.2.1.3
(09-09-2004)
Amount of Wager

- (1) In determining the amount of any wager, all charges incident to the placing of such wager shall be included. However, if the taxpayer establishes, in accordance with regulations prescribed by the Secretary or his/her delegate, that an amount equal to the tax has been collected as a separate charge from the person placing such wager, the amount so collected shall be excluded.

9.5.11.5.2.1.4
(11-01-2011)
Persons Liable for Wagering Excise Tax

- (1) Every person required to pay the excise tax imposed by 26 USC 4401 shall keep a daily record showing the gross amount of all wagers for which he/she is liable in addition to all other records required pursuant to 26 USC 6001. An agent or employee, shall keep a daily record of wagers received, commissions retained, and amount turned over to his principal. The records required to be maintained by principal and agent shall at all times be open for inspection by revenue officers. The records shall be maintained for a period of at least three years from the date the wager was received.
- (2) Monthly returns of the excise tax on wagers must be filed on Form 730, Tax on Wagering. The taxes are due and payable to the designated operating division, without notice from the IRS, on or before the last day of the month following that for which it is made.
- (3) Each person who is engaged in the business of accepting wagers shall be liable for and shall pay the tax on all wagers placed with him/her. Each person who conducts a wagering pool or lottery shall be liable for and shall pay the tax on all wagers placed in such pool or lottery.
- (4) A person is engaged in the business of accepting wagers if they routinely accept wagers for which they assume the risk of profit or loss depending upon the outcome of the event or contest with respect to the wager accepted. To be engaged in the business of accepting wagers, a person need not be engaged in the business to the exclusion of all other activities or even primarily engaged.
- (5) Courts have ruled that a single transaction does not constitute engaging in the business of wagering unless additional evidence reveals otherwise. However, a single wagering transaction made under circumstances that indicate it is made in the usual course of business may make the person liable for the special tax. The chance for successful prosecution is better if there is evidence the person accepted several wagers and competent witnesses are available to testify as to the passage of money and its acceptance as wagers.

9.5.11.5.2.1.5
(09-09-2004)

**Exclusions From
Wagering Excise Tax**

- (1) No excise tax shall be imposed on:
 - a. Any wager placed with or placed in a wagering pool conducted by a pari-mutuel wagering enterprise licensed under state law,
 - b. Any wager placed in a coin-operated device or on any amount paid in lieu of inserting a coin, token, or similar object to operate such a device,
 - c. Any wager placed with the state or with its authorized employees or agents in a sweepstakes, wagering pool, or lottery conducted by that state agency acting under the authority of state law.

9.5.11.5.2.1.6
(09-09-2004)

**Territorial Extent of
Wagering Excise Tax**

- (1) The tax imposed by 26 USC 4401 applies only to wagers which are:
 - a. Accepted in the United States,
 - b. Placed by a person who is in the United States,
 - c. Placed by a person who is a citizen or resident of the United States,
 - d. Placed by a person in a wagering pool or lottery conducted by a person who is a citizen or resident of the United States.

9.5.11.5.2.2
(09-09-2004)

Wagering Special Tax

- (1) Title 26 USC 4411 imposes a special tax of \$500 per year to be paid by each person who is liable for the tax under 26 USC 4401 or is engaged in receiving wagers for or on behalf of any person so liable. In states where wagers are authorized, the special tax will be \$50 per year. However, in order to qualify for the \$50 rate, all wagers accepted must be specifically authorized by the state where they were accepted.
- (2) The application of 26 USC 4411 may be illustrated by the following examples:
 - a. "A" is engaged in the business of accepting horse race bets and employs 10 persons to receive, on his/her behalf, wagers that are transmitted by telephone. "A" also employs a secretary and a bookkeeper. "A" and each of the 10 employees who receive wagers by telephone on "A's" behalf of are liable for special tax. The secretary and bookkeeper are not liable for the special tax unless they also receive wagers for "A."
 - b. "B" operates a numbers game and has an arrangement with 10 persons who are employed in such capacities as bootblacks, elevator operators, news dealers, etc., to receive wagers from the public on his/her behalf. "B" also employs "C" to collect the wagers received from the 10 persons and to deliver such wagers to "B." "C" performs no other services for "B." "B" and the 10 persons who receive wagers on his/her behalf are liable for the special tax. "C" is not liable for the special tax since he/she is not engaged in receiving wagers for "B."
- (3) The special tax imposed by 26 USC 4411 must be paid before an individual or firm engages in accepting wagers. The special tax is computed as of the first day of July each year or the first day that wagers are accepted. In the former investigation, the special tax shall be computed for one year but, in the latter, it shall be prorated from the first day of the month in which wagers were accepted, to and including the 30th day of June.

9.5.11.5.2.3
(09-09-2004)

Wagering Registration

- (1) Title 26 USC 4412 provides that each person required to pay a special tax under 26 USC 4411 shall register with the designated service official in charge of the IRS territory where the wagering business is conducted. In the event a firm or company conducts the wagering business, the names and places of residence of the persons constituting the firm or company shall be registered.

- (2) Form 11C, Occupational Tax and Registration Return for Wagering is used for registration and requires:
 - a. The name and place of residence of taxpayer,
 - b. Whether he/she is liable for the excise tax,
 - c. Each place of business where the wagering activity is carried on,
 - d. The name and place of residence of each person who is engaged in receiving wagers for him/her,
 - e. Whether he/she is engaged in receiving wagers for or on behalf of any person subject to the excise tax,
 - f. The name and place of residence of each such person.

9.5.11.5.3
(09-09-2004)
Civil Fraud Penalties

- (1) See IRM 20.1.2, Failure to File/Failure to Pay Penalties for penalties relating to failure to file tax returns and failure to pay taxes.

9.5.11.5.4
(11-01-2011)
**Processing Wagering
Tax Information**

- (1) The SAC will ensure that leads involving major customers of bookmakers are followed up for income tax purposes. Income tax information obtained by a special agent during a wagering investigation will be summarized on Form 3949, Information Report Referral, and submitted to his/ her SSA who will forward the lead to the Lead Development Center (LDC) (see IRM 9.4.1, Investigation Initiation).
- (2) In determining whether information received during wagering investigations has tax consequences, data reported on tax returns and results of prior investigations may need to be considered. If tax returns or other data are not readily available, the information may be placed in a pending status until the tax returns are obtained.
- (3) Upon receiving the requested returns, the SSA will forward the information item to the SAC for processing. The SAC may defer acting on leads involving customers until the criminal investigation against the bookmaker is concluded. The SAC, in determining when to act on these leads, should consider such factors as the civil and criminal statute of limitations as well as the effect IRS action may have on pending investigations.

9.5.11.5.5
(09-09-2004)
**Criminal Investigations
of Wagering Excise
Statutes**

- (1) Primary enforcement efforts in the wagering tax area shall be aimed at the independent initiation and development of criminal investigations against major operators and financiers along with situations involving widespread noncompliance. IRS efforts will strive to promote balanced enforcement with respect to investigations of wagering occupational, wagering excise, and income tax violations on identified subjects.
- (2) Generally, a major wagering operation is one comprised of five or more individuals who conduct, finance, manage, supervise, direct or own all or part of a gambling business and meet one or more of the following criteria:
 - a. Has a daily gross of over \$2000,
 - b. Conducts business at more than one location,
 - c. Actively handles lay-off bets,
 - d. Is a principal of the operation,
 - e. Is notorious or powerful with respect to local criminal activity.

- (3) Investigations not meeting the criteria may be investigated and recommended for prosecution only if they are associated with and are simultaneously submitted for prosecution as a package with an investigation meeting the criteria.
- (4) The most frequently used criminal statutes in wagering tax violations are:
 - a. Willful attempt to evade or defeat the payment of wagering tax (26 USC 7201),
 - b. Willful failure to file return or supply information (26 USC 7203),
 - c. Failure to pay special wagering tax (26 USC 7262).

9.5.11.5.6
(11-01-2011)
**Venue and Statute of
Limitations on Wagering
Taxes**

- (1) Violation of 26 USC 7262, which provides a maximum penalty of \$5,000 for not paying the special tax imposed by 26 USC 4411, is committed in the judicial district where the wager was accepted. Therefore, venue lies in the judicial district where the wager was accepted without regard to the location of the territory office.
- (2) The statute of limitations with regard to both excise and occupational wagering taxes (26 USC 7201 or 26 USC 7203) is 6 years from the date of the last overt act or statutory due date of the return, whichever is later. However, the statute of limitation for Title 26 USC 7203 with respect to, Failure to Keep Records and Failure to Supply Information, is 3 years, not 6 years.
- (3) Collateral violations related to wagering, such as filing false claims, conspiracy, and false statements, may also incur penalties prescribed by 18 USC 287, 18 USC 371, and 18 USC 1001 respectively.
- (4) Title 26 USC 4424 was intended to remove any constitutional challenges regarding enforcement of the wagering taxes resulting from improper disclosure of wagering tax information.

9.5.11.5.7
(11-01-2011)
**Investigative Techniques
Used in Wagering
Investigations**

- (1) Investigations of wagering tax violations usually require the surveillance of violators and localities to obtain evidence of the underlying wagering activity. When appropriate, this evidence can be used to obtain probable cause for issuance of search warrants. In the affidavit for a search warrant, the special agent must state that IRS records were searched, and by whom, for the wagering tax stamp. See IRM 9.4.9, Search Warrants, Evidence, and Chain of Custody, for information concerning affidavits for search warrants.
- (2) If during the course of the investigation, a special agent participates in any type of game which requires continuous play and is exempt from wagering excise tax (i.e., blackjack, poker, craps or roulette), the accountability for amounts wagered, won or lost, will be determined at the conclusion of play. The computation will be made by comparing the amount on hand at the conclusion of the wagering activity to the amount at the outset of play.
- (3) Winnings on wagers placed by special agents may be treated the same as other profits which are received by the government in ongoing undercover operations. If winnings are to be held for use as evidence, the special agent will follow procedures for the safekeeping, control, and disposition of seized money as discussed in IRM Chapter 9.7, Asset Seizure and Forfeiture.

9.5.11.6
(09-09-2004)
Excise Tax

- (1) An excise tax is a duty imposed upon the manufacture, sale, or consumption of commodities within the country, and upon certain occupations.
- (2) Some taxes are merely regulatory while others are imposed for both regulatory and revenue generating purposes. Most excise taxes, however, are levied exclusively for the purpose of generating revenue.

9.5.11.6.1
(11-01-2011)
**Excise and Income
Taxes Distinguished**

- (1) Income taxes are based on net income or net profits and are computed on a graduated scale. Excise taxes are not computed on a graduated scale and may be based upon any of the following factors:
 - a. Selling price of merchandise or facilities,
 - b. Services sold or used,
 - c. Number, weight, or volume of units sold, and
 - d. Nature of occupation.

9.5.11.6.1.1
(09-09-2004)
Tax Period

- (1) Certain excise tax returns are required to be filed on either a fiscal year or calendar year basis. In general, excise tax returns are filed on a calendar quarter year basis. Income tax returns are required to be filed on either a fiscal year or calendar year basis.

9.5.11.6.1.2
(09-09-2004)
**Additional Taxes and
Penalties**

- (1) Assessments of additional or delinquent excise taxes are referred to as "additional taxes." In income tax investigations, such assessments are known as "deficiencies." There are many types of civil penalties specifically applicable to excise tax investigations. Civil penalties in income tax investigations are limited to three types: delinquency, negligence, and fraud (see IRM 9.5.13, Civil Considerations).

9.5.11.6.1.3
(11-01-2011)
Court Appeals

- (1) While income tax investigations may be petitioned before the U.S. Tax Court without prepayment of the taxes, excise tax investigations of interest to CI generally are not contested before the U.S. Tax Court (see subsection 9.5.11.6.2). Challenges to such excise tax investigations generally are made to either the U.S. Court of Claims or the U.S. District Court, and then only upon prepayment of some amount of outstanding tax.

9.5.11.6.2
(02-06-2024)
Excise Tax Categories

- (1) The excise tax categories of interest to CI include:

Manufacturers excise taxes:	<ul style="list-style-type: none">• Automotive and related items (gasoline, gasohol sales, gasoline sales used for gasohol, and tires).• Coal from underground and surface mines.• Recreational equipment such as firearms (pistols, revolvers, other firearms, shells and cartridges) and sporting goods (fishing equipment, bows, arrows and related equipment).
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Occupational taxes:	<ul style="list-style-type: none"> • Wagering. • Brewers. • Retail liquor dealers. • Retail dealers in beer, • Wholesale dealers in beer. • Limited retail dealers.
Facilities and services:	<ul style="list-style-type: none"> • Communications (local and toll telephone service and teletypewriter service). • Transportation (transportation of persons by air, inland waterways users fuel, and transportation of property).
Heavy truck and trailer retailer taxes:	<ul style="list-style-type: none"> • Truck parts and accessories installations. • Truck chassis or body. • Truck trailer. • Semitrailer chassis or body.
Miscellaneous excise taxes:	<ul style="list-style-type: none"> • Seabed mining. • Environmental taxes. • Highway motor vehicle use tax. • Foreign insurance policies. • Wagering taxes. • Liquor taxes. • Tobacco taxes.

- (2) Excise taxes on alcohol, tobacco, and firearms are not under the jurisdiction of IRS. Those items are taxed under Subtitle E of Title 26. Responsibility for the enforcement of excise taxes on alcohol, tobacco, machine guns, and certain other firearms is vested exclusively with the Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms (ATF).

9.5.11.6.3
(09-09-2004)
**Excise Tax
Investigations**

- (1) Excise tax returns, unlike those for income taxes, do not lend themselves to analysis to determine the possible existence of tax violations. The information contained in quarterly excise tax returns on Form 720, Quarterly Federal Excise Tax Return, is limited to the kind of tax, the gross tax, the credit for overpaid tax in prior returns, and the net tax due.
- (2) Excise tax investigations related to false or fraudulent returns usually result from referrals following field audits of taxpayers' books and records. As violations applicable to excise taxes often occur simultaneously with income tax offenses, field audits conducted by the operating division in income tax matters often disclose violations with respect to excise taxes.
- (3) Referrals in such investigations often relate to both excise and income tax violations. Investigations of offenses involving willful failure to file excise tax returns, or willful failure to collect and pay over excise taxes, are usually based upon referrals from the civil operating divisions.

- (4) Excise tax violations are also disclosed through surveys conducted by CI and from information obtained by special agents during his/her investigation of income tax offenses. As most excise tax offenses are committed in conjunction with income tax violations, investigation of both types of violations usually arise from the same sources.

9.5.11.6.4
(09-09-2004)

**Techniques of Excise
and Income Tax
Investigations Compared**

- (1) Although the criminal penalties for most excise tax violations are imposed by the same Title 26 sections that relate to income taxes, the nature of the evidence needed to sustain prosecution of excise tax violations differs in many respects from that required in income tax investigations.
- (2) Excise tax is based on specifically enumerated articles or services, whereas income tax is based strictly on income.
- (3) For this reason, the established methods for determining income in income tax investigations may be inadequate to sustain a criminal prosecution for evasion of the excise tax on specifically enumerated articles or services.
- (4) Under certain circumstances the specific item method of proving income may be effectively used in excise tax investigations, especially if adequate records are maintained by the taxpayer.
- (5) Any other method of proving income may be used if the circumstances are such that the evidence developed will serve to establish or buttress proof of a violation of the excise tax on the specifically enumerated articles or services involved.
- (6) In general, the investigative techniques applicable to income tax investigations may be used in excise tax investigations.

9.5.11.6.5
(11-01-2011)

**Jeopardy Assessment in
Excise Tax
Investigations**

- (1) Title 26 USC 6862 provides that if the secretary believes the collection of any tax (other than income tax, estate tax, gift tax, and the excise taxes imposed by Chapters 41, 42, 43, and 44) under any provision of the Internal Revenue laws will be jeopardized by delay, he/she should, whether or not the time otherwise prescribed by law for making a return and paying such tax has expired, immediately assess such tax (together with all interest, additional amounts, and additions to the tax provided for by law).

9.5.11.6.6
(09-09-2004)

**Criminal Penalties for
Excise Tax Violations**

- (1) Criminal penalties for most violations of excise taxes are imposed by the same USC sections that relate to income taxes and cover offenses such as:
 - a. Willful failure to file a return, pay tax, supply information, or keep records,
 - b. Willful failure to account for, collect, and pay over a particular tax,
 - c. Willful attempts to defeat the tax in any manner.
- (2) The USC also provides specific penalties that are only applicable to the various excise taxes. (The various criminal penalties are enumerated in IRM 9.1.3, Criminal Statutory Provisions and Common Law.) For example, 26 USC 7215 and 26 USC 7512, relate to offenses involving collected taxes and cover noncompliance with an official notice to collect and deposit "trust fund" taxes.

9.5.11.7
(02-06-2024)

Collateral Investigations

- (1) A request for collateral investigation from one CI field office to another should be specific as to the information and data needed and should include a statement of all facts and background information considered necessary or useful in making the desired inquiries.
- (2) In determining whether or not to request a collateral investigation, consideration should be given to the feasibility of communicating essential background information, as well as to the scope of the inquiries that must be made. If knowledge of a complex set of circumstances is a prerequisite or if extensive inquiries must be made, the dispatching of a special agent is generally preferable to requesting a collateral investigation.
- (3) A request for a collateral investigation will be addressed to the SAC of the field office where the desired information is thought to be available. The request will bear the originating special agent's signature, telephone number, and the signature of the SSA of the originating field office authorized to approve such requests.
- (4) A collateral investigation can be made either electronically (e-mail) or by conventional mail or express mail services. In all instances, the request will be submitted through the SSA.
- (5) Whether electronically, by mail, or express service, the request should include the mailing address to be used by the responding office. If the requesting field office wants the response to go directly to a post of duty, the following format at the conclusion of the request is suggested:
 - (Signature of originating special agent)
 - (Originating special agents' phone number)
 - Approved:
 - (Signature)
 - (Title)
 - Mail Reply To:
 - (Name)
 - (PO Box or street and number)
 - (City, State, Zip Code)
- (6) A reply to a request for collateral investigation will be addressed to the SAC of the field office that made the request. It should bear the signature and the telephone number of the special agent who made the collateral investigation. The reply and any accompanying exhibits or schedules will be mailed (or express serviced, if appropriate) to the SAC of the requesting field office. If all or part of the response can be made electronically (e-mail), the responding field office should include the pertinent information in the electronic transmission with electronic copies to the respective officials.
- (7) A request for a collateral investigation should be complied with expeditiously, within 30 calendar days if possible. The requesting office should be promptly notified in any instance in which it becomes apparent that the request cannot be complied with within 60 calendar days after receipt.
- (8) If a collateral investigation relates to one or more investigation(s), the investigation number or numbers must be shown in the request for the collateral investigation, as well as in the reply.

- (9) The names of individuals, corporations, partnerships, and other business or taxable entities will be typed in capital letters whenever used in requests for a collateral investigation, replies thereto, and related correspondence.
- (10) When requesting a collateral investigation, the official of the initiating or requesting field office with authority to obligate funds for the payment of the collateral summons will do so at the estimated payment level (see IRM Chapter 25.5, Summons). The transmittal letter accompanying the summons should indicate the authority level of obligation of the approving official.
- (11) The requesting field office will forward a completed Form 2039, Summons, with all information provided except for the time and place for appearance and the official before whom the witness is to appear. The requesting field office, as appropriate, will also forward an envelope(s) addressed to the last known address(es) of any noticee(s).
- (12) In the event the replying field office believes the Form 2039 to be incomplete, they should communicate this information to the requesting field office. With concurrence, the replying field office may prepare a revised Form 2039 or the requesting field office may prepare and forward another Form 2039, as appropriate. In the event the replying field office prepares a revised Form 2039, that field office should observe the authority level of obligation as stated in the transmittal letter unless otherwise authorized by the requesting field office.
- (13) If the official of the receiving field office determines prior to third-party compliance with the summons that the anticipated costs will exceed the obligated amount for which the approving official has authority, he/she will advise the requesting field office of the need for an approval from an official with higher obligation authority.
- (14) When the official of the field office serving the summons in coordination with the issuing official of the requesting field office determines the summons has been satisfactorily complied with, the summonsed documents will be submitted to the requesting field office along with the original summons. A copy of the summons will be retained by the replying field office.
- (15) Third parties who are summonsed will submit bills through the serving official to the official in the requesting field office who originally authorized the summons. If the actual bill exceeds the obligating authority of the approving official, it will be that official's responsibility to obtain subsequent approval at the required level.
- (16) The issuing official will review the bill for accuracy and reasonableness and then certify the bill for payment (see IRM Chapter 25.5, Summons). The bill will then be forwarded to the field office budget officer for payment processing.
- (17) For additional information concerning summonses issued in connection with collateral investigations (see IRM Chapter 25.5, Summons).
- (18) See IRM 9.5.2, Grand Jury Investigations, with regard to collateral investigations in grand jury investigations.

9.5.11.8
(11-01-2011)
**Probation Revocation
Investigations**

- (1) When information is received during the period of probation or supervised release from other operating divisions, the attorney for the government, the US Probation officer, or other sources, indicating that a convicted subject of a criminal investigation is not in compliance with the conditions of his/her probation, CI should contact the U.S. Attorney's Office (USAO) to advise that revocation of probation or supervised release may be necessary. Once a decision has been made to seek revocation, CI should assist the USAO and U.S. Probation Officer in obtaining or providing any necessary testimony and documentation.
- (2) If the decision is made to investigate the defendant for violating his or her conditions of probation or supervised release, time should be charged to the original investigation number.
- (3) If the court finds that the defendant violated a condition of probation or supervised release, the court may continue probation (with or without extending the terms), modifying the conditions, or revoke probation and impose the defendant's original sentence. Upon revocation of probation or supervised release, CIMIS must be updated. Sentenced violations in CIMIS should reflect 18 U.S.C. 3565. The status of the investigation in CIMIS should reflect "Revocation of Probation Before Civil Action" or "Revocation of Probation After Civil Action". The terms of probation and sentencing will also require updating in CIMIS.

9.5.11.9
(09-17-2020)
**Voluntary Disclosure
Practice**

- (1) The Voluntary Disclosure Practice is a long-standing practice of the IRS that provides taxpayers with criminal exposure a means to come into tax compliance and potentially avoid criminal prosecution.
- (2) The Voluntary Disclosure Practice is a compliance option for taxpayers who have committed tax or tax-related crimes and have criminal exposure due to their willful violation of the law. If the violation of the law was not willful, taxpayers should consider other options including correcting past mistakes by filing amended or past due returns.
- (3) A voluntary disclosure will be considered along with all other factors in determining whether criminal prosecution will be recommended. A voluntary disclosure does not guarantee immunity from prosecution.
- (4) The Voluntary Disclosure Practice creates no substantive or procedural rights for taxpayers. Taxpayers cannot rely on the fact that other similarly situated taxpayers may not have been recommended for criminal prosecution. IRS-CI's determinations, including but not limited to determinations concerning timeliness, completeness, truthfulness, rejection, and revocation decisions, are not subject to any administrative or judicial review or appeal process.
- (5) The Voluntary Disclosure Practice is not available to taxpayers with illegal source income. Income from activities determined to be legal under state law but illegal under federal laws is considered illegal source income for purposes of the IRS-CI Voluntary Disclosure Practice.
- (6) A voluntary disclosure occurs when the communication is truthful, timely, and complete. The practice also requires taxpayers to:
 - a. Cooperate with the IRS in determining their tax liability and compliance reporting requirements,

- b. Cooperate with the IRS in investigating any professional enablers who aided in the noncompliance,
 - c. Submit all required returns, information returns, and reports for the disclosure period, and
 - d. Make good faith arrangements with the IRS to pay in full, the tax, interest, and any penalties determined by the IRS to be applicable.
- (7) A disclosure is timely if it is received before:
- a. The IRS has commenced a civil examination or criminal investigation of the taxpayer or has notified the taxpayer that it intends to commence such an examination or investigation.
 - b. The IRS has received information from a third party (e.g., informant, other governmental agency, or the media) alerting the IRS to the taxpayer's noncompliance.
 - c. The IRS has acquired information directly related to the noncompliance of the taxpayer from an enforcement action (e.g., search warrant, summons, grand jury subpoena).

9.5.11.9.1
(02-06-2024)
**Voluntary Disclosure
Process**

- (1) All voluntary disclosures must meet the requirements contained in subsection 9.5.11.9.
- (2) Taxpayers must utilize Form 14457 – Voluntary Disclosure Practice Preclearance Request and Application to participate in the Voluntary Disclosure Practice. For detailed information on how to complete Form 14457, taxpayers should review the Instructions for Form 14457, found on <https://www.irs.gov/pub/irs-pdf/f14457.pdf>.
- (3) Form 14457 is submitted to IRS-Criminal Investigation (IRS-CI) in two parts. Part I – Preclearance Request is submitted to request preclearance. Preclearance involves supplying key information for IRS-CI to determine if the taxpayer is eligible to make a voluntary disclosure, including establishing if the unreported income is from legal sources and that the timeliness requirements are met. IRS-CI will provide the taxpayer with written notification of whether the preclearance request is approved or denied.
- (4) After receiving written confirmation of preclearance, the taxpayer must submit Part II – Voluntary Disclosure Application within 45 days. One additional 45-day extension may be granted upon written request. Part II cannot be submitted without first obtaining preclearance and a case control number in the written confirmation of preclearance.
- (5) Part II requires a narrative, signed under the penalties of perjury by the taxpayer (and their spouse if making a joint disclosure), with specific facts that detail the complete story of the willful noncompliance. The narrative must address the taxpayer's personal and professional background. The narrative must identify all professional advisors that rendered services to the taxpayer from the inception of the noncompliance. And the narrative must provide the whole story with all favorable and unfavorable facts including the entire history of noncompliance from the inception through the present. Instructions for Form 14457 provide guidance for taxpayers in preparing narratives. Any submission that does not contain a narrative statement of facts including all elements addressed in the Instructions to Form 14457 will be considered incomplete.

- a. Taxpayers who fail to submit complete narratives that include every element addressed in the Instructions to Form 14457 will not be given an opportunity to supplement their submissions.
 - b. IRS-CI will notify taxpayers who fail to submit complete narratives by letter that their voluntary disclosure was not preliminarily accepted.
- (6) CI will review Part II of Form 14457 and determine if the taxpayer may participate in the Voluntary Disclosure Practice. If approved to participate, CI will provide the taxpayer with a Preliminary Acceptance Letter and forward the Form 14457 to a civil section of the IRS. Once the case is assigned, an examiner will contact the taxpayer.
 - (7) For additional guidance and definitions to complete the Form 14457, please see the Instructions for Form 14457 - Voluntary Disclosure Preclearance Request and Application found on <https://www.irs.gov/pub/irs-pdf/f14457.pdf>.

9.5.11.9.2
(02-06-2024)

**Designated Criminal
Investigation Employees**

- (1) All Voluntary Disclosures are submitted to and processed by CI-Headquarters-Global Operations (CI-HQ-GO).
- (2) Upon receipt of a Form 14457 – Part I, Preclearance Request, the assigned CI-HQ-GO employees will input the request into CIMIS, assigning a voluntary disclosure number to the request.
- (3) The CI-HQ-GO employee will review the request to verify all items are complete and every question is answered. If the taxpayer meets the definition of timely and the preclearance request is complete, the CI-HQ-GO employee will issue a preclearance letter to the taxpayer, advising them to submit Part II of Form 14457- Voluntary Disclosure Application within 45 days.
- (4) Upon receipt of Part II of Form 14457, the CI-HQ-GO employee will review the disclosure. If all items are complete and meet eligibility requirements, a preliminary acceptance letter will be issued to the taxpayer.
- (5) Once preliminary acceptance is granted, CI will forward the disclosure to the LB&I Offshore Identification Unit for further civil processing to the appropriate business operating division. An examiner assigned to the case will contact the taxpayer with an initial contact letter.

Note: When numbering an investigation within CIMIS, the system does not cross check the voluntary disclosure listing within CIMIS to determine if a voluntary disclosure application exists for the taxpayer. Special Agents must run a national query search to determine if a taxpayer has submitted a voluntary disclosure application. It is strongly recommended that Special Agents run a national query search before numbering any taxpayer, to verify that taxpayer has not submitted a voluntary disclosure. Application of a voluntary disclosure is a factor to be considered when recommending prosecution for the taxpayer.

9.5.11.9.3
(02-06-2024)

**Responding to Taxpayer
Inquiries**

- (1) In responding to inquiries concerning the IRS voluntary disclosure practices, all IRS employees will refer to subsection 9.5.11.9.
- (2) Employees will provide the taxpayer with their title, name, employee ID number, and telephone number.

- (3) Employees should direct taxpayers and representatives to <https://www.irs.gov/pub/irs-pdf/f14457.pdf> or this section of the IRM for detailed explanations.
- (4) If the taxpayer requests further information, refer the taxpayer to the CI Headquarters Global Operations Office. All employees who receive questions from taxpayers and representatives regarding the status of a preclearance request or preliminary acceptance should instruct them to send an email to the Voluntary Disclosure Program Manager (Senior Analyst) at ovdcidirect@ci.irs.gov.
- (5) Taxpayers and representatives with questions about completing any portion of Form 14457 may contact CI-HQ-GO personnel by emailing ovdcidirect@ci.irs.gov.

9.5.11.9.4
(09-17-2020)
Disqualifying Factors

- (1) If a taxpayer answers “yes” to any of the following questions on the Form 14457 – Part I, the taxpayer may be ineligible from participating in the Voluntary Disclosure Practice.
 - a. Has the IRS notified you, your spouse, or any related entities that it intends to commence an examination or criminal investigation?
 - b. Are you, your spouse or any related entities currently the subject of a criminal investigation or civil examination?
 - c. Are you, your spouse, or any related entities under investigation by any law enforcement authority?
 - d. Do you, your spouse, or any related entities have income sourced from an illegal activity? (The IRS voluntary disclosure practice does not apply to taxpayers with illegal source income.)
- (2) If a taxpayer makes any false statement as to any material matter on any part Form 14457, then the taxpayer may be ineligible from participating in the Voluntary Disclosure Practice or may have eligibility revoked.
 - a. Example 1: Taxpayer receives preclearance to make a voluntary disclosure. Taxpayer then timely submits Form 14457 – Part II to IRS-CI. Taxpayer answers question 7.a. (“Has anyone, including a foreign government or a foreign financial institution, advised you that your offshore account records, which are the subject of this voluntary disclosure, were susceptible to being turned over to the U.S. Government pursuant to an official request?”) “No”, but his answer is false. During review of his Form 14457 – Part II, IRS-CI identifies the answer to question 7.a. as false. IRS-CI will deny preliminary acceptance to the Voluntary Disclosure Practice.
 - b. Example 2: Same facts as Example 1, except during review of the Form 14457 – Part II, IRS-CI does not identify the answer to question 7.a. as false. IRS-CI proceeds with preliminary acceptance to the Voluntary Disclosure Practice. Later, information is provided to IRS-CI that the taxpayer answered question 7.a. falsely. IRS-CI will revoke preliminary acceptance and inform the taxpayer of the revocation in writing.
- (3) Taxpayers are required to comply with U.S. law for all tax years following the disclosure period and timely file returns according to standard filing procedures. Taxpayers that made any prior voluntary disclosure will be subject to enhanced review by IRS-CI to determine whether accepting another voluntary disclosure violates the requirement of compliance following the disclosure period.

- (4) If the taxpayer is not eligible to make a voluntary disclosure, IRS-CI will send a letter informing them that they were not preliminarily accepted into the Voluntary Disclosure Practice, or that preliminary acceptance has been revoked.

9.5.11.9.5
(02-06-2024)
**Evaluating the
Disclosure**

- (1) CI-HQ-GO employees, to include the Voluntary Disclosure Program Manager (Senior Analyst) will evaluate disclosures to determine if the information provided is truthful and complete.
- (2) If research reveals potentially disqualifying information, the application will be denied and the taxpayer will be provided with a declination letter.
- (3) If research reveals no disqualifying information and the disclosure is complete, IRS-CI will preliminarily accept the voluntary disclosure and will refer the case to civil for further civil processing.

9.5.11.9.6
(02-06-2024)
**Transmitting the
Voluntary Disclosure to
SB/SE or LB&I Offshore
Identification Unit**

- (1) Once a preliminary acceptance letter has been sent to the taxpayer by CI, CI-HQ-GO personnel will electronically transfer all documentation related to the disclosure to the LB&I Offshore Identification Unit in Austin, Texas.
- (2) The monthly transfer of disclosures received from CI to LB&I is completed as follows:
 - a. CI-HQ-GO personnel will maintain a separate paper file for each disclosure and associated documents (evaluation checklist, copies of communications/letters, etc.).
 - b. All files are inventoried, boxed and forwarded to the CI Data Processing Center.
 - c. The CI Data Processing Center will scan each document, run optical character recognition (OCR) and prepare each document for electronic loading onto IRS and CI servers and CI databases.
 - d. Once loaded onto the servers, LB&I will be able to retrieve the documents for civil examination.
- (3) If the IRS later determines that the taxpayer has not cooperated fully or has provided materially false information, the matter will be referred back to CI for further evaluation and possible criminal investigation via the fraud referral process.

9.5.11.9.7
(09-17-2020)
**Revocation of Voluntary
Disclosure**

- (1) If a taxpayer fails to fully cooperate with the civil examination, the examiner may request CI revoke a taxpayer's preliminary acceptance. If it is determined that the taxpayer provided materially false information, the matter will be referred to CI for criminal evaluation and possible criminal investigation via the fraud referral process.
- (2) If an examiner requests revocation of preliminary acceptance, a Request for Revocation of Preliminary Acceptance memo will be sent to CI. If CI concurs with the request, CI will issue a Revocation Letter.
- (3) If a CI special agent or civil examiner discovers that a taxpayer made materially false statement(s) on the Form 14457, the agent/examiner may request revocation of preliminary acceptance by writing a memo to the Senior Analyst assigned to Voluntary Disclosure Practice outlining the facts and circumstances surrounding the alleged false statement(s).

- (4) If after review of the agent/examiner's memo, the Senior Analyst agrees with the revocation recommendation, the Senior Analyst will direct the revocation request, along with the memo, to a Director of International Field Operations for final approval. If approved, IRS-CI will notify the taxpayer/representative informing them of the revocation.

9.5.11.9.8
(09-17-2020)
Record Keeping

- (1) All voluntary disclosure requests are recorded in CIMIS and assigned a voluntary disclosure CIMIS number.
- (2) CI will maintain documents relating to voluntary disclosures according to standard document retention procedures.

9.5.11.10
(11-01-2011)
**Armed Escort
Assignment**

- (1) The TIGTA-OI has the primary responsibility to evaluate and conduct all armed escorts of IRS employees. Criminal Investigation has the primary responsibility for the protection of the IRS Commissioner.
- (2) The TIGTA can seek the assistance of CI on armed escorts. If TIGTA requires the armed escort assistance of CI, the TIGTA SAC will forward the request in writing to the appropriate CI Director, Field Operations for concurrence.
- (3) Upon approval by the respective DFO, TIGTA will then coordinate with the proper CI office regarding the armed escort assistance.
- (4) When CI is assigned to assist on an armed escort, it will be TIGTA's responsibility for enforcement assessments and all administrative requirements. Criminal Investigation will number the armed escort in CIMIS in accordance with established procedures to account for time spent assisting TIGTA.
- (5) Armed escort requests received directly by CI from IRS employees/management should direct the referring IRS employee/management to the nearest TIGTA-OI office.

Note: It should be noted that when numbering an armed escort within CIMIS the system does not cross check the investigations within CIMIS to determine if there is a current criminal investigation ongoing.

9.5.11.10.1
(02-06-2024)
**Armed Guard
Assignment**

- (1) The IRM 10.2.9, Physical Security Program-Occupant Emergency Plan, contains IRS requirements and responsibilities for developing occupant emergency plans for offices and facilities occupied by the IRS in accordance with Federal Property Management Regulations 101-20.5.
- (2) Special agents may be assigned as armed guards to protect government property in emergency situations where normal safeguards are not available. This might include guarding unusually large amounts of currency receipts prior to deposit, guarding against forcible rescue of seized property, or other guard details resulting from catastrophic situations.

9.5.11.10.2
(11-01-2011)
**Armed Escort
Assignment
Considerations**

- (1) When special agents receive an armed escort assignment, they should meet with the appropriate TIGTA personnel to discuss the facts of the request.
- (2) It is TIGTA's responsibility to assess the risk of the armed escort on which CI is assisting; however, TIGTA's risk assessment should be confirmed by CI.

- (3) Security considerations and checks the assisting CI agent(s) should discuss and verify with the responsible TIGTA personnel include, but are not limited to:
- Integrated Data Retrieval System (IDRS) file check for a Potentially Dangerous Taxpayer (PDT) code,
 - Criminal records check,
 - Registered weapons check,
 - Local uniformed police assistance,
 - Special weapons and protective clothing needs,
 - Medical service availability,
 - Prisoner transportation needs,
 - Property protection needs,
 - Treasury Enforcement Communication System (TECS) checks for other agency assault investigations, fugitive status, etc.

Note: The National Crime Information Center (NCIC), State and Local Criminal History Files, are available through the Interstate Identification Index (III) (Criminal History Files). These files may be used only in the administration of criminal justice. Therefore, this information cannot be disseminated to other IRS operating divisions.

9.5.11.10.3
(02-06-2024)
Understanding Role

- Representatives from both functions should become familiar with applicable procedures and responsibilities so that, during the armed escort, each representative understands his/her role.
- When assisting TIGTA, CI special agents accompanying IRS personnel who are attempting to make a seizure of personal property for payment of delinquent taxes, the special agents must bear in mind that the seizure must be accomplished without the use of force.
- The primary function of special agents in these assignments is to protect the IRS personnel in the performance of his/her duties.

9.5.11.10.3.1
(11-01-2011)
Resistance Encountered

- If resistance is encountered, the special agents involved should instruct the IRS personnel to stop the seizure activity. All IRS personnel should return to his/her office and report the matter to his/her respective supervisor(s).
- When an assault or threat occurs in the course of a CI assisted armed escort, the special agents will take appropriate enforcement action, which may include placing the attacker under arrest (see subsection 9.5.11.3).
- As TIGTA will be primarily responsible for the armed escort and will likely be present in the event an enforcement action is necessary, TIGTA will determine what, if any, investigation is warranted and will be responsible for initiating the processing of the individual(s) as PDT(s).
- In instances where an assault or threat occurred during an enforcement action on an armed escort, and CI is not accompanied by TIGTA, CI will promptly notify TIGTA and provide documentation concerning the incident and action taken.
- During an enforcement action where resistance is encountered, the SAC will review all the facts surrounding the incident and, if circumstances dictate, will

consult with CT Counsel regarding obtaining appropriate warrants (see IRM 9.4.12, Arrests). The SAC will keep the Director, Field Operations, informed as to these matters.

9.5.11.10.3.2
(11-01-2011)
Threat

- (1) If, during the course of the armed escort, a threat, but not a physical attack, is made against IRS personnel or the accompanying special agents, the special agents and IRS personnel should leave and immediately. The TIGTA should then promptly be notified of the threat.
- (2) After a threat has been made and reported, TIGTA will determine what investigation by TIGTA is warranted and will initiate appropriate processing of PDTs.

9.5.11.10.3.3
(11-01-2011)
Physical Attack

- (1) If, during the course of the armed escort, a physical attack is made upon the IRS personnel or the accompanying special agents, the special agents have the authority to place the attacker under arrest for the crime committed in the agents' presence (see IRM 9.4.12, Arrests).
- (2) The safety of all IRS personnel involved should be considered before the arrest is made.
- (3) Since the armed escort will likely be at the request of TIGTA, TIGTA will be aware or will be made aware of the incident. In the event the attack occurred on an exigent and/or emergency armed escort, where TIGTA has not requested the armed escort, the incident must be reported to TIGTA within three business days.
- (4) Procedures regarding rescue of seized property are found in IRM 9.4.12, Arrests.

9.5.11.11
(02-06-2024)
**Protection and
Maintenance of
Informants and
Witnesses**

- (1) Federal agencies have always recognized a duty to protect informants and witnesses from threats or possible danger resulting from his/her assistance to the government by furnishing information or by testifying on behalf of the government in criminal prosecutions.
- (2) The Department of Justice Witness Security Program was established pursuant to Title V of the Organized Crime Control Act and the Witness Security Reform Act. Title V grants the Attorney General broad discretionary authority and appropriations to provide for the protection of actual and potential government witnesses in legal proceedings against any person alleged to have participated in an organized criminal activity or other serious offense.
- (3) The Comptroller General of the United States ruled IRS has the authority to use its appropriations for temporary protection of an informant/witness or a witness until a determination by the Department of Justice (DOJ) is made that the person qualifies for Title V protection under its Witness Security Program.
- (4) The IRS also has authority to approve all confidential expenditures for other protective arrangements undertaken by the IRS for an informant/witness or a witness who does not qualify for or is refused protection under the DOJ Witness Security Program, in an investigation which is not under the jurisdiction of the US Attorney's Office.
- (5) The existence of the Title V appropriation precludes the use of a more general appropriation such as that under which the IRS receives operating funds.

- (6) Special Investigative Techniques oversees the responsibilities of the Criminal Investigation Witness Security Coordinator (WSC). In this capacity, Special Investigative Techniques coordinates all IRS protective arrangements and relocations, as the central contact point for field, DOJ, and HQ functions.

9.5.11.11.1
(09-09-2004)
**Department of Justice
Protection**

- (1) The responsibility for the security and maintenance of witnesses and his/her family is placed with the US Marshals Service. Protection and maintenance will be allowed upon the finding of the Director, DOJ-OEO that the proposed witness meets all the following conditions:
 - a. The person is a qualifying witness in a specific investigation in process or during or after a grand jury proceeding,
 - b. Evidence exists that indicates the life of the witness or a member of the witness' family or household is in immediate jeopardy,
 - c. Evidence in possession indicates it would be advantageous to the Federal interest for DOJ to protect the witness and/or a family or household member.

9.5.11.11.2
(09-09-2004)
**Confidential
Expenditures for
Protection**

- (1) Authorized confidential expenditures made for protection and maintenance provided by IRS will only be charged to Sub-Object Class Code (SOC) 9104 — Confidential Expenditures for Protection and Maintenance of Witnesses and Informants. See IRM 9.11.1, Fiscal and Budgetary Matters, concerning the use of imprest funds and reimbursement procedures for confidential expenditures.
- (2) Payments to or on behalf of informants or witnesses may not be made for reimbursement for loss of income, personal inconvenience, or any other type of monetary damage suffered, i.e., a distress sale of a business or residence.
- (3) Sensitive information that could compromise the safety of the informant or witness will not be furnished to Fiscal Management offices. Reimbursement for confidential expenditures may be claimed only through imprest funds for investigative purposes. Reimbursement for these expenditures may not be claimed on travel vouchers.

9.5.11.11.3
(09-09-2004)
Emergency Protection

- (1) Upon receipt by an IRS employee of information alleging a threat or possible danger to a past or present government informant or witness, and/or his/her family or close associates, the employee will forward the information to the SAC. The SAC will exercise his/her judgment to decide whether or not any protective arrangements are necessary and appropriate under the circumstances.
- (2) In the event an informant or witness, and/or his/her immediate family or close associates, may be in immediate danger, the SAC is authorized to provide protective arrangements of a temporary nature, not to exceed seven days, and expend confidential funds up to \$10,000.
- (3) Once the informant or witness is temporarily protected from the immediate danger, the SAC should determine the necessity for long-term protection arrangements. The SAC should consider entering the informant or witness into the DOJ Witness Security Program if he/she has determined that long-term protection is necessary.

- (4) When making his/her determination regarding witness protection arrangements, the SAC should refer to the following subsections: 9.5.11.11.5, 9.5.11.11.7, and 9.5.11.11.8. In addition, the SIT Witness Security Coordinator may be consulted for assistance.
- (5) While a final determination for long-term protection arrangements is under consideration and during the period prior to the institution of those arrangements, temporary protection may be necessary. Once the initial seven-day period has lapsed, or the amount of confidential expenditures will exceed \$10,000, the SAC will obtain Director, Field Operations, approval to continue to provide temporary protection arrangements. If the confidential expenditures exceeds \$20,000, Chief, CI, approval is required.

9.5.11.11.4
(02-06-2024)
**Investigations under
Jurisdiction of the
United States Attorney**

- (1) In those situations where the investigation is under the jurisdiction of the US Attorney's Office, it is incumbent that each US Attorney, his/her assistants, and the investigative agency present to DOJ-EOE the request for authorization to place an individual in the Witness Security Program. Such requests should be made at the earliest possible time during the investigation process. Therefore, the SAC should provide to the US Attorney's Office any assistance necessary in developing the request.
- (2) The SAC will prepare a memorandum and forward it through the Director, Field Operations, to the Director, Global Operations, ATTN: Witness Security Coordinator.
- (3) The memorandum will contain a brief synopsis of the investigation the assistance provided by the informant or witness. The memo must also include a Risk Assessment Report and Threat Assessment Report on the informant or witness who is to be protected, and his/her family members or close associates.

9.5.11.11.4.1
(09-09-2004)
Risk Assessment Report

- (1) The Risk Assessment Report will contain the following information:
 - a. Significance of the investigation,
 - b. The possible danger to other persons or property in the relocation area from the witness, and/or any relocated family member or close associate of the witness, if he/she is placed in the program,
 - c. What alternatives to using the program were considered and why they will not work,
 - d. Whether or not the prosecutor can secure similar testimony from other sources,
 - e. What is the importance of the witness' testimony,
 - f. Whether or not the need for the witness' testimony outweighs the risk of danger to the public.

9.5.11.11.4.2
(09-09-2004)
**Threat Assessment
Report**

- (1) The Threat Assessment Report will contain the following information:
 - a. Brief synopsis of investigation,
 - b. Description of the criminal organization involved,
 - c. Illegal activities involved,
 - d. Detailed information on the threat, whether direct or potential, to the witness, his/her family, or close associate as a result of cooperation with the government,

- e. Name and identifying data for all individuals who pose a danger to the witness,
- f. The witness' association with defendants,
- g. The witness' direct involvement in the illegal activity.

9.5.11.11.4.3
(02-06-2024)

Prisoner Witnesses

- (1) For prisoner witnesses, the memorandum will contain only a threat assessment. If the witness candidate is or will be a prisoner, the following information is also required on all persons who have been identified as posing a threat to the witness and who are in or are likely to come into Federal custody:
 - a. Name,
 - b. Alias,
 - c. Social security number,
 - d. Date of birth,
 - e. Race,
 - f. Sex,
 - g. Height,
 - h. Weight,
 - i. Color of eyes,
 - j. Color of hair,
 - k. Ethnic origin,
 - l. Nationality,
 - m. Offense,
 - n. Current status (appeal, fugitive, incarcerated).
- (2) The memorandum prepared by the SAC will be forwarded through the Director, Field Operations, to the Director, Global Operations, ATTN: Witness Security Coordinator.

9.5.11.11.4.4
(02-06-2024)

Probationers and Parolees

- (1) For probationers and parolees, the memorandum will include a brief synopsis of the investigation and the assistance provided by the informant or witness, and should include both a Risk and Threat Assessment Report. If the witness is under state probation or parole, the state must consent to the witness' entry into the program and transfer his/her supervision to a Federal probation officer. It may be necessary for the special agents to obtain specific state documents for proper supervision of state probationers and parolees. Documents needed for state probationers include a pre-sentence or background report detailing:
 - a. A description of the offense and prior criminal history, the Order of Probation from the court indicating the sentence of probation imposed with signed conditions of release and any other pertinent materials
 - b. The circumstances of the offense and prior criminal conviction history, a sentence data record indicating the type and length of sentence imposed by the state court, a signed parole or release certificate, and all available institutional materials such as progress reports and classification materials.
- (2) The SAC will forward the memorandum through the Director, Field Operations, to the Director, Global Operations, ATTN: Witness Security Coordinator.
- (3) The Director, Global Operations will forward the memorandum, along with his/her recommendation, to DOJ-OEO. If the request is disapproved and the SAC desires to recommend other protection arrangements, additional authority is required. The SAC should prepare a memorandum in accordance with subsec-

tion 9.5.11.11.7, provided that the individual meets the criteria in subsection 9.5.11.11, to permit the IRS to protect him/her.

- (4) The SAC should follow the procedures in subsection 9.5.11.11, if any temporary protective arrangements are necessary.

9.5.11.11.5
(02-06-2024)
**Informant/Witness
Qualifies for Department
of Justice Witness
Security Program**

- (1) The Director, Global Operations, will coordinate the matter with DOJ if the witness appears to qualify for the Witness Security Program and advise the SAC through channels of the appropriate action to take in order to continue or terminate any protective arrangements.
- (2) A US Marshals Service Inspector will accompany an IRS representative to meet the witness, and/or his/her adult family members or close associates, to explain the scope of the Witness Security Program. The results of this preliminary meeting will be forwarded to the Director, DOJ-OEO, for evaluation and determination.
- (3) Under the Witness Security Reform Act, the evaluation includes the psychological testing of the witness and all relevant adult family members or close associates by the Bureau of Prisons psychologists.
- (4) A polygraph examination of all Witness Security Program candidates who are incarcerated or will be incarcerated is also required.
- (5) If it is determined the individual is eligible to be enrolled in the Witness Security Program, there will be a second meeting with the witness and a Memorandum of Understanding will be executed by the witness and the US Marshals Service.
- (6) Any protection of an individual for whom relocation is being requested remains the responsibility of the IRS until such time as the DOJ-OEO has reviewed the request and approved admission of the witness to the Program, and the US Marshals Service has had the opportunity to arrange for the safe removal of the witness and his/her family.
- (7) Once an individual has been accepted into the Witness Security Program and is under the US Marshals Service jurisdiction, no attempts by the special agents or other area or field office personnel will be made to directly contact a protected witness or the US Marshals Service. This restriction also applies to an informant or witness who has been accepted under the IRS Security Program. Any necessary contact will be coordinated through the CI Witness Security Coordinator (WSC).
- (8) When the protection agreement for a witness terminates, the SAC will submit a report through the Director, Field Operations, to the Director, Global Operations, ATTN: Witness Security Coordinator. The report should include the following:
- Identification of the witness and the exact date the IRS's obligation to provide protection terminated or, in the instance of an extended agreement, the date such obligation is scheduled to end,
 - A summary of the services provided,
 - Significant or unusual events or problems which occurred,
 - Suggestions which would help improve any future protection commitments,

- e. Costs of the protection and relocation services provided by category, i.e., lodging, subsistence, and relocation costs, hours expended, etc.

9.5.11.11.6
(02-06-2024)

**Investigations Not Under
Jurisdiction of the
United States Attorney**

- (1) Upon receipt by an IRS employee of information alleging a threat or possible danger to a past or present government informant or witness, and/or his/her family or close associates, the employee will forward the information to the SAC. The SAC will exercise his/her judgment to decide whether or not any protective arrangements are necessary and appropriate under the circumstances.
- (2) In the event of immediate danger or emergency, the SAC is authorized to provide protective arrangements of a temporary nature not to exceed seven days, as provided in subsection 9.5.11.11.4.
- (3) When the investigation does not fall under the jurisdiction of the US Attorney or an informant or witness refuses protection from the DOJ Witness Security Program, the SAC shall use his/her judgment to determine if temporary and/or other protective arrangements are necessary and appropriate. Consultation with the SIT Witness Security Coordinator should be sought. In addition, the SAC should also obtain a CT Counsel's review of any proposed written protection agreements with an informant or witness. The refusal of an informant or witness to enter the DOJ Witness Security Program must be documented. The signature of the informant or witness should be obtained acknowledging his/her refusal.
- (4) The SAC is authorized to provide temporary protection for an informant or witness, and/or his/her family members or close associates, while other protection arrangements are being finalized. The procedures are set forth in subsection 9.5.11.11.
- (5) For protection arrangements that exceed seven days, the SAC will prepare a memorandum that contains an explanation of the proposed protection arrangement, the specific amounts of confidential expenditures associated with the protection arrangement, a Risk Assessment Report, and a Threat Assessment Report. This memorandum will be forwarded to the Director, Field Operations, for approval. If the cost exceeds \$20,000, the Chief, CI, approval is required.
- (6) Whenever practical, any informant or witness protected by the IRS should not be protected locally. The DOJ Witness Security Program should be recommended to all informants and witnesses requiring long-term protection. If the informant or witness refuses or does not qualify for the DOJ Witness Security Program, the IRS will not relocate them. However, informants or witnesses who has received a lump sum payment based upon his/her cooperation in an investigation may use those funds, at his/her discretion, to provide for his/her own personal welfare.
- (7) Special agents are not authorized to commit any funds for compensation and expenses of informants or witnesses, and are not authorized to make protective maintenance agreements. Agreements made without authorization may become the personal responsibility of the maker.
- (8) When the protective agreements for an informant or witness terminate, the SAC will submit a report through the Director, Field Operations, to the Director, Global Operations, ATTN: Witness Security Coordinator (see subsection 9.5.11.11).

9.5.11.11.6.1
(09-09-2004)

Risk Assessment Report

(1) The Risk Assessment Report will contain the following information:

- a. Significance of the investigation,
- b. The possible danger to other persons or property in the relocation area of the witness and/or any relocated family member or close associate if the witness is placed in the program,
- c. What alternatives to using the program were considered and why they will not work,
- d. Whether or not the prosecutor can secure similar testimony from other sources,
- e. What is the importance of the witness' testimony,
- f. Whether or not the need for the witness' testimony outweighs the risk of danger to the public.

9.5.11.11.6.2
(09-09-2004)

Threat Assessment Report

(1) The Threat Assessment Report will contain the following information to the extent possible:

- a. Name, address, place and date of birth, sex, race, citizenship, and any identification numbers, such as SSN, FBI or police numbers on persons for who protection is requested.
- b. All facts and circumstances relating to the threat or danger to the informant or witness, members of his/her family or household, and/or his/her close associates. This information should include the complete names and addresses of all individuals known or believed to pose a threat to the informant or witness. Photographs of those individuals should be included, if available.
- c. Information and/or evidence being supplied or to be supplied by the informant or witness and the importance of the material.
- d. Attach a copy of any arrest record and/or criminal history for the informant or witness or members of his/her family or household or close associates.
- e. Describe the illegal organization and the importance of the role of the defendants and other participants in the organization.
- f. All other agencies to which the informant or witness has supplied or is supplying information, and any investigations resulting therefrom. All pending investigations, Federal or state, where the witness' testimony may be required.
- g. Name of all individuals, informants, or witnesses, who have been provided previous protection in connection with the same investigation; also, the names and locations of any other individuals connected with the investigation that are likely to be placed under the Witness Security Program.
- h. Realistic estimate regarding the duration of protective measures.
- i. Whether or not the informant or witness, a member of his/her family or household, and/or any close associate appears to qualify for the Witness Security Program of the US Marshals Service.
- j. Number of members in family and/or household to be protected (name, date and place of birth, and relationship).
- k. Name, SSN, date and place of birth, and address of ex-spouse with visitation rights.
- l. Assets and liabilities of protectees (property, loans, alimony, support payments, bank accounts, pensions, Federal, state, or local taxes, etc.)

- m. Medical problems experienced by the informant or witness, any member of his/her family or household, and/or any close associate, including any history of drug abuse.
- n. Employment data (education, job skills, last employments, and employability of family and/or household members).
- o. Income from all sources.
- p. Whether the informant or witness is receiving or expects to receive money from other state or Federal agencies and, if so, how much.
- q. If the informant or witness, a member of his/her family or household, and/or any close associate is incarcerated, when can release be reasonably anticipated.
- r. Indicate any parole or probation restrictions of the informant or witness, a member of his/her family and/or household, and/or any close associate.
- s. A narrative report of the detailed debriefing of the informant or witness covering all areas of knowledge the informant or witness may have concerning criminal activity, including matters beyond the scope of the instant investigation in which the informant or witness is to give testimony.

9.5.11.11.7
(02-06-2024)

**Protective Arrangements
When not Qualified for
the Witness Security
Program**

- (1) Any protective arrangements undertaken by the IRS for an informant or a witness who does not qualify for the DOJ Witness Security Program will require the approval of the Director, Global Operations, unless the confidential funds requested exceeds \$20,000, which will require approval of the Chief, CI. The request must be approved by the SAC and the Director, Field Operations, then forwarded to the Director, Global Operations, ATTN: Witness Security Coordinator. When not approved, the request will be returned through normal channels to the SAC with an explanation for not approving the activity.
- (2) The following information will be provided along with the original request in securing the authorization for the expenditure of confidential funds:
 - a. The specific amounts needed to make confidential expenditures for protection and maintenance (relocation expenses, rent, etc.),
 - b. The location of the imprest fund to be utilized.
- (3) If it is determined that the IRS will provide other protection arrangements for the informant or witness, the procedures set forth in subsection 9.5.11.11 will be followed.
- (4) Special agents are neither authorized to commit any funds for compensation and expenses of informants or witnesses nor authorized to make protective maintenance agreements. Agreements made without authorization may become the personal responsibility of the maker.
- (5) When the protection agreement for a witness terminates, the SAC will submit a report through the Director, Field Operations, to the Director, Global Operations, ATTN: Witness Security Coordinator (see subsection 9.5.11.11).

9.5.11.11.8
(09-09-2004)

**Protected Informant or
Witness Conference**

- (1) In all situations where the IRS provides for the protection of an informant or witness, a conference will be held with the person.
- (2) He/she will be required to attend and may have legal counsel present, if he/she so desires.
- (3) A field representative and the WSC, or his/her delegate, will also be in attendance to brief the informant or witness of the protection, relocation, and

subsistence arrangements being undertaken, the responsibilities of the IRS, and the responsibilities of the informant or witness.

- (4) It should be made clear to the informant or witness that any protection or subsistence afforded them by the IRS is solely for his/her physical welfare and no compensation will be made for loss of income, personal inconvenience, or any other type of monetary damage suffered, such as a distress sale of a business or residence.
- (5) In addition, the WSC will discuss with the informant or witness his/her past and current individual and/or business tax situation.
- (6) The WSC, after consulting with the Director, General Legal Services Division of the Office of the Chief Counsel, will obtain from the informant or witness a signed "Memorandum of Understanding" (MOU) that will reflect those items discussed at the conference and his/her understanding and agreement with the terms and conditions set out in the MOU.

9.5.11.11.9
(02-06-2024)
**Victim/Witness
Assistance**

- (1) Criminal Investigation has the responsibility of responding to the needs of victims and witnesses in accordance with Title 42 10606 and 42 USC 10607. Title 42 10606 was superseded by the Justice for All Act of 2004.
- (2) The Victims Rights and Restitution Act of 1990 established two laws Title 42 10606 and 42 USC 10607. Title 42 10606 was superseded by the Justice for All Act of 2004.
- (3) The intent of the laws is to ensure that victims and witnesses receive the rights and services enumerated in the Justice for All Act of 2004 and Title 42 USC 10607 as outlined below:

Victims' Rights:

- 1) The right to be reasonably protected from the accused.
- 2) The right to reasonable, accurate, and timely notice of any public court proceeding or any parole proceeding involving the crime, or of any release or escape of the accused.
- 3) The right not to be excluded from any such public court proceeding, unless the court, after receiving clear and convincing evidence, determines that testimony by the victim would be materially altered if the victim heard other testimony at that proceeding.
- 4) The right to be reasonably heard at any public proceeding in the district court involving release, plea, sentencing, or any parole proceeding.
- 5) The reasonable right to confer with the attorney for the Government in the case.
- 6) The right to full and timely restitution as provided in law.
- 7) The right to proceedings free from unreasonable delay.
- 8) The right to be treated with fairness and with respect for the victim's dignity and privacy.

Services to Victims:

- a. DESIGNATION OF RESPONSIBLE OFFICIALS -- The head of each department and agency of the United States engaged in the detection, investigation, or prosecution of crime shall designate by names and office

titles the persons who will be responsible for identifying the victims of crime and performing the services described in section (c) at each stage of a criminal case.

- b. IDENTIFICATION OF VICTIMS -- At the earliest opportunity after the detection of a crime at which it may be done without interfering with an investigation, a responsible official shall:
 - (1) identify the victim or victims of a crime;
 - (2) inform the victims of his/her right to receive, on request, the services described in section (c); and
 - (3) inform each victim of the name, title, and business address and telephone number of the responsible official to whom the victim should address a request for each of the services described in section (c).
- c. DESCRIPTION OF SERVICES --
 - (l) A responsible official shall:
 - (A) Inform a victim of the place where the victim may receive emergency medical and social services;
 - (B) Inform a victim of any restitution or other relief to which the victim may be entitled under this or any other law and manner in which such relief may be obtained;
 - (C) Inform a victim of public and private programs that are available to provide counseling, treatment, and other support to the victim; and
 - (D) Assist a victim in contacting the persons who are responsible for providing the services and relief described in subparagraphs (A), (B), and (C).
 - (2) A responsible official shall arrange for a victim to receive reasonable protection from a suspected offender and persons acting in concert with or at the behest of the suspected offender.
 - (3) During the investigation and prosecution of a crime, a responsible official shall provide a victim the earliest possible notice of:
 - (A) The status of the investigation of the crime, to the extent it is appropriate to inform the victim and to the extent that it will not interfere with the investigation;
 - (B) The arrest of a suspected offender;
 - (C) The filing of charges against a suspected offender;
 - (D) The scheduling of each court proceeding that the witness is either required to attend or, under 1102(b)(4), is entitled to attend;
 - (E) The release or detention status of an offender or suspected offender;
 - (F) The acceptance of a plea of guilty or nolo contendere or the rendering of a verdict after trial; and
 - (G) The sentence imposed on an offender, including the date on which the offender will be eligible for parole.
 - (4) During court proceedings, a responsible official shall ensure that a victim is provided a waiting area removed from and out of the sight and hearing of the defendant and defense witnesses.
 - (5) After trial, a responsible official shall provide a victim the earliest possible notice of:
 - (A) The scheduling of a parole hearing for the offender;
 - (B) The escape, work release, furlough, or any other form of release from custody of the offender; and
 - (C) The death of the offender, if the offender dies while in custody.
 - (6) At all times, a responsible official shall ensure that any property of a victim that is being held for evidentiary purposes be maintained in good condition and returned to the victim as soon as it is no longer needed for evidentiary purposes.

(7) The Attorney General or the head of another department or agency that conducts an investigation of a sexual assault shall pay, either directly or by reimbursement of payment by the victim, the cost of a physical examination of the victim which an investigating officer determines was necessary or useful for evidentiary purposes.

(8) A responsible official shall provide the victim with general information regarding the corrections process, including information about work release, furlough, probation, and eligibility for each.

d. No cause of action or defense:

This section does not create a cause of action or defense in favor of any person arising out of the failure of a responsible person to provide information as required by section (b) or (c) of this section.

(4) A victim witness (VW) coordinator can discuss return information with victims and witnesses in situations which include but are not limited to:

- a. when the return or return information relates or may relate to a transactional relationship between a person who is or may be a party to the proceeding and the taxpayer which affects or may affect the resolution of an issue in the proceeding or the investigation,
- b. special agents are authorized by 26 USC 6103(k)(6) to disclose return information to the extent such disclosure is necessary in obtaining information which may be relevant to a tax investigation, but is not otherwise reasonably available,
- c. in situations involving imminent death or physical injury, special agents have the authority and can make immediate determination and subsequent disclosure without contacting the Disclosure Officer.

Note: When CI is engaged in tax administration, 26 USC 6103 imposes severe restrictions on the disclosure of information gathered and prohibits CI from disclosing returns and “return information” in a manner not specifically authorized by the statute. It does not authorize disclosure of “return” and “return information” to the “victim” of the criminal activity, notwithstanding any provision of the victim witness laws. Thus, CI is statutorily barred from complying with the victim notification provisions of 42 USC 10607 in the vast majority of tax administrative investigations. When confronted with the aforementioned, notification is to be provided to CT Counsel.

9.5.11.11.9.1
(12-02-2009)
**Use in Criminal
Investigation**

- (1) The provisions of the Title 42 USC 10607 law may be applied to any investigation in which a victim or witness needs protection or further assistance such as medical care or counseling. For CI purposes, the provisions of Title 42 USC 10607, will generally come into effect after a primary investigation has been elevated to a subject criminal investigation.
- (2) The VW coordinator maintains a list of resources and services to be considered when evaluating the needs of eligible individuals.
- (3) In each investigation, the directive may be implemented as long and as often as deemed necessary. It is not limited by a time period.

9.5.11.11.9.2
(02-06-2024)
Joint Responsibility

- (1) The Chief, CI, the US Attorney, or the DOJ Attorney responsible for prosecution are designated by Title 42 USC 10607 as having joint responsibility for applying the provisions of this directive.

- (2) If the US Attorney's Office has become involved in an investigation, the responsible official shall be the US Attorney in whose district the prosecution is pending. If the US Attorney's Office or the DOJ litigating division has not assumed responsibility for an investigation, the SAC is the responsible official.
- (3) In all investigations, CI will coordinate its efforts to provide service to victims or witnesses with the US Attorney's Office.
- (4) Criminal Investigation should maintain contact with each US Attorney's Office to facilitate prompt implementation of the directive when necessary.
- (5) Even when the US Attorney is the responsible official as defined in the directive, CI is not prohibited from unilaterally providing protection, medical care, or other services to a victim or witness if dictated by circumstances. The US Attorney's Office should always be notified as soon as possible.

9.5.11.11.9.3
(02-06-2024)
**Recordkeeping
Requirements**

- (1) Each field office coordinator is required to report on a semi annual basis each occasion that provisions of Title 42 USC 10607 have been implemented. The Victim/Witness Assistance Coordinator for the respective field office will send an activity report to the National Victim/Witness Assistance Coordinator (Global Financial Crimes). The report is due by the 15th day of January and July. The report should contain the following information:
 - a. Coordinator's Name,
 - b. Field Office,
 - c. Telephone,
 - d. Month and Year,
 - e. Number of Victims Contacted:
Male(s),
Female(s),
Juvenile(s) under 18: Male(s) Female(s).
 - f. Number of Witnesses Contacted:
Male(s),
Female(s),
Juvenile(s) under 18: Male(s) Female(s).
 - g. Brief Narrative of the case, to include the type of service(s) or information provided (Status of the investigation, arrest of the subject, property returned, etc):
 - h. Referrals Provided to Crime Victims/Witnesses:
Counseling,
Treatment,
Social Services,
Victim Compensation,
Sexual Assault Victim Assistance.
 - i. Protection
 - j. Provided Information On:
Status of the Investigation,
Arrest of a Suspected Offender,
Non-Investigative Referral,
Prosecution Denied,
 - k. Additional Services Provided:
Property Return,
Notify the Employer,
Notify Creditors,

Transportation,
Parking,
Translator.

- l. Number of Reported Cases of Child Abuse,
- m. Number of Referrals to the USAO Victim/Witness Program,
- n. Number of Referrals from the USAO Victim/Witness Program,
- o. Number of Referrals to Other Agency V/W Program,
- p. Number of Referrals from Other Agency V/W Program,
- q. Number of Referrals to Local Police Department,
- r. Number of Referrals from Local Police Department,
- s. Number of Declinations of Service(s) by Victims/Witnesses,
- t. Other.

9.5.11.11.9.4
(11-01-2011)

**Victim/Witness
Protection Coordinator**

- (1) Each field office is required to have a Victim/Witness Coordinator. The field coordinators will contact the National Victim/Witness Coordinator (Global Financial Crimes) for assistance, as needed. Matters regarding the actual protection of the victim or witness for operational purposes should be directed to the Witness Security Coordinator (Special Investigative Techniques).

