



MANUAL TRANSMITTAL

Department of the Treasury
Internal Revenue Service

9.5.13

AUGUST 26, 2020

EFFECTIVE DATE

(08-26-2020)

PURPOSE

- (1) This transmits revised IRM 9.5.13, Civil Considerations.

MATERIAL CHANGES

- (1) Subsections 9.5.13.1 through 9.5.13.1.2 reflect the IRS requirement that IR manuals address Internal Controls (ICs). The ICs mandate is outlined in The Heightened Awareness, Sensitivity, and Understanding of Internal Controls memo dated September 14, 2016. Internal Controls are the program manual's policies and procedures. The ICs describe the program manual's objectives, and officials charged with management and oversight. The ICs ensure the:
 - a. Mission and program objectives are clearly delineated and key terms are defined; and
 - b. Program operations are in conformance with applicable laws and regulations.
- (2) To conform to the new Internal Controls standards:
 - a. Former subsection 9.5.13.1, Overview, is retitled to Program Scope and Objectives to properly reflect the information communicated in the subsection. The subsection clearly delineates the program manual's mission, objectives, and goals.
 - b. New subsection 9.5.13.1.1 is added to provide the legal authorities for the program manual (Civil Considerations).
 - c. New subsection 9.5.13.1.2 is added as a compiled list of the terms and acronyms used within the program manual (Civil Considerations).
- (3) Subsections 9.5.13.3.2 (5) and 9.5.13.3.2.1 (2) are revised to properly list FinCEN Enforcement Division because FinCEN Office of Compliance and Regulatory Enforcement is obsolete.
- (4) Subsection 9.5.13.3.2.1 (1) revised to update FinCEN contact information for T31 Civil Referrals to Associate Director, Enforcement Division.
- (5) Exhibit 9.5.13-1 has been updated to include current rates for civil penalties.
- (6) Additional revisions, deletions, and grammatical changes were made throughout the section, which did not result in substantive changes but contributed to the procedural clarity of the subject matter.

EFFECT ON OTHER DOCUMENTS

This IRM supersedes IRM 9.5.13 dated January 6, 2009.

AUDIENCE

CI

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9.5.13

Civil Considerations

Table of Contents

9.5.13.1 Program Scope and Objectives

9.5.13.1.1 Authority

9.5.13.1.2 Acronyms

9.5.13.2 Civil Tax and Penalty Assessments on the Criminal Tax Investigation

9.5.13.2.1 Criminal Vs. Civil Tax

9.5.13.2.2 Civil Penalties

9.5.13.2.2.1 Fraud Penalty (26 USC 6663)

9.5.13.2.2.2 Accuracy-Related (Negligence or Disregard of Rule or Regulations) Penalty (26 USC 6662)

9.5.13.2.2.3 Failure to File (Delinquency) Penalty (26 USC 6651(a)(1))

9.5.13.2.2.4 Failure To Pay (Late Payment) Penalty (26 USC 6651(a)(2))

9.5.13.2.2.5 One Hundred Percent Penalty (26 USC 6672)

9.5.13.3 Civil Penalties on Money Laundering Investigations

9.5.13.3.1 Penalties For Title 18 Money Laundering Investigations

9.5.13.3.2 Civil Penalties in Title 31 Investigations

9.5.13.3.2.1 Title 31 Civil Penalties Assessed Against a Financial Institution

9.5.13.4 Responsibility for the Civil Statue of Limitations in a Grand Jury Investigation

9.5.13.5 Offers in Compromise

9.5.13.5.1 Offers in Pending Criminal Investigations

9.5.13.6 Jeopardy and Termination Assessments

9.5.13.6.1 Criteria For Determining When a Jeopardy or Termination Assessment Is Appropriate

9.5.13.6.2 Jeopardy or Termination Assessment Recommendations

9.5.13.6.3 Approval Process for Jeopardy or Termination Recommendations

9.5.13.6.4 Jeopardy Assessments in Actual and Potential Criminal Tax Investigations

9.5.13.6.5 Jeopardy and Termination Assessment Review Process

9.5.13.7 Reporting Derogatory Information Relating to Attorneys, Certified Public Accountants, and Enrolled Agents

9.5.13.7.1 Application for Enrolled Agent Status

9.5.13.7.2 Reporting Derogatory Information Relating to Unenrolled Agents (REV. PROC 81-38)

Exhibits

9.5.13-1 Civil Penalties

9.5.13-2 Memorandum for Office of Professional Responsibility

9.5.13.1
(08-26-2020)
Program Scope and Objectives

- (1) Internal Revenue Code (USC Title 26) provides civil and criminal sanctions for violations of the Internal Revenue laws. Civil considerations must be taken into account when a joint or parallel investigation is conducted with SB/SE, LB&I, TE/GE or W&I. Typically, civil assessments and penalties are not assessed until the criminal aspects of an investigation have been formally closed. However, civil assessments, penalties, offers, etc., while separate from criminal activities can still impact the criminal investigation. This section deals with some of those civil matters that may warrant consideration.

9.5.13.1.1
(08-26-2020)
Authority

- (1) See IRM 9.1.2, Authority for delegated authority relating to 9.5.13, Civil Considerations.

9.5.13.1.2
(08-26-2020)
Acronyms

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

Acronym	Definition
CI	Criminal Investigation
CMIR	Report of International Transportation of Currency and Monetary Instruments
CPA	Certified Public Accountant
CT	Criminal Tax
DOJ	Department of Justice
FBAR	Report of Foreign Bank and Financial Accounts
FDIC	Federal Deposit Insurance Corporation
FinCEN	Financial Crimes Enforcement Network
IC	Intelligence Community
IRM	Internal Revenue Manual
IRS	Internal Revenue Service
LB& I	Large Business and International
OIC	Offer in Compromise
OPR	Office of Professional Responsibility
SAC	Special Agent in Charge
SB/SE	Small Business/Self-Employed
SA	Special Agent
SSA	Supervisory Special Agent
TE/GE	Tax Exempt Government Entities

TIGTA	Treasury Inspector General for Tax Administration
USAO	United States Attorney's Office
USC	United States Code
W&I	Wage and Investment

9.5.13.2
(08-26-2020)
Civil Tax and Penalty Assessments on the Criminal Tax Investigation

- (1) Internal Revenue Code (USC Title 26) provides civil and criminal sanctions for violations of the Internal Revenue laws. Both civil and criminal sanctions may be imposed for the same offense. Typically, civil assessments and penalties are not assessed until the criminal aspects of an investigation have been formally closed.

9.5.13.2.1
(08-26-2020)
Criminal Vs. Civil Tax

- (1) The CT deficiency may differ from the civil tax deficiency in the civil process. Criminal violations are charged only against the tax deficiency that results from fraud. The civil tax deficiency is much broader and includes all tax due on a return, i.e., the tax from the evaded income and the adjustments to the subject's itemized deductions.
- (2) Civil tax liability may differ from criminal tax liability for a number of reasons:
 - a. Adjustments of a controversial or offsetting nature may not be included in a criminal tax computation to remove controversial issues from the criminal action.
 - b. Adjustments of a minor, technical, or a non-fraudulent nature may be considered solely for civil purposes.
 - c. Evidence that may not meet the burden of proof necessary in a criminal investigation may be adequate for a civil case.
- (3) Internal Revenue Policy Statement 4-26 (formally P-4-84)(IRM 1.2.1, Service-wide Policies and Authorities, Servicewide Policy Statements) provides, among other things, that the consequences of civil enforcement actions provides, among other things, that the consequences of civil enforcement actions on matters involved in the criminal investigation and prosecution case should be carefully weighed. Policy Statement 4-26 (formally P-4-84) requires balancing the civil and criminal aspects of investigations to maximize civil enforcement without imperiling criminal prosecution. This policy requires the full and positive support of all enforcement divisions/functions to maintain continuing cooperation and coordination. Experience has demonstrated that pursuing both the criminal and the civil aspects of an investigation concurrently may jeopardize the successful completion of the criminal investigation. As a result, if there is doubt as to whether a proposed civil action would imperil prosecution, the field office should consult with CT Counsel.

9.5.13.2.2
(08-26-2020)
Civil Penalties

- (1) In addition to tax due and owing on a tax return, there are many types of civil penalties which may be applicable to any given case. Special agents should be alert to violations which may subject the taxpayer to other civil penalties as set out in IRM 20, Penalties and Interest. Shown below are penalties most often included in an assessment of a subject being investigated by CI. A very brief overview of some of the more common penalties can be found in Exhibit 9.5.13-1.
- (2) The civil sanctions, generally assessed as additions to the tax and often referred to as ad valorem penalties, are covered in IRC Chapter 68. Some of these penalties are briefly described in the subsections below.
- (3) When the term “willfulness” is found in a civil penalty statute, it means actions “knowingly”, “consciously”, or “intentionally” taken. A voluntary course of action, rather than an accidental cause of action, would seem to satisfy the civil requirements. When used in criminal revenue statutes, the word willful means a voluntary, intentional violation of a known legal duty. The word is also employed to characterize a thing done without ground for believing it is lawful or conduct marked by careless disregard whether or not one has the right to so act.

9.5.13.2.2.1
(08-26-2020)
Fraud Penalty (26 USC 6663)

- (1) The fraud penalty, when assessed, is 75 percent of the underpayment of tax due to fraud. In the case of a joint return, the penalty does not apply with respect to a spouse unless some part of the underpayment is due to the fraud of that spouse. If any portion of the underpayment is attributable to fraud, then the entire underpayment shall be treated as attributable to fraud, except with respect to any portion of the underpayment which the taxpayer establishes (by a preponderance of the evidence) is not attributable to fraud.” (See also IRM 20.1.5.16.2)
- (2) Acquittal in a criminal prosecution is not decisive of the civil fraud issue. However, a criminal conviction for income tax evasion does decide the fraud issue and the subject is collaterally estopped from raising it in the civil proceedings.

9.5.13.2.2.2
(08-26-2020)
**Accuracy-Related
(Negligence or Disregard
of Rule or Regulations)
Penalty (26 USC 6662)**

- (1) The negligence or disregard of rules or regulations penalty, when assessed, is 20 percent of the underpayment. The negligence or disregard of rules or regulations penalty cannot be asserted against any portion of the understatement against which the fraud penalty is asserted, except as an alternative penalty position. (See IRM 20.1.5.3.2).
- (2) The term “negligence” includes any failure to make a reasonable attempt to comply with the provisions of this title, and the term “disregard” includes any careless, reckless, or intentional disregard.

9.5.13.2.2.3
(08-26-2020)
**Failure to File
(Delinquency) Penalty
(26 USC 6651(a)(1))**

- (1) A delinquency penalty of five percent a month may be imposed when a tax return is filed delinquently without reasonable cause, or when a taxpayer fails to file a return without fraudulent intent. The penalty, limited to 25 percent, is imposed on the net amount due.

- 9.5.13.2.2.4
(08-26-2020)
Failure To Pay (Late Payment) Penalty (26 USC 6651(a)(2))
- (1) In the case of failure to pay the amount shown as tax on any return on or before the date prescribed for payment, a penalty shall be added to the amount shown on the return. The penalty equals 0.5 percent of the amount of the underpayment of tax for the first month, with an additional 0.5 percent for each additional month or fraction thereof during which such failure continues, not to exceed an aggregate of 25 percent.
- 9.5.13.2.2.5
(08-26-2020)
One Hundred Percent Penalty (26 USC 6672)
- (1) A 100 percent penalty equal to the total amount of tax evaded may be imposed on any person who is required to collect, truthfully account for, and pay over any tax and willfully evades, fails to collect, account for and/or pay over such tax, or willfully attempts in any manner to evade or defeat any such tax.
- 9.5.13.3
(02-09-2005)
Civil Penalties on Money Laundering Investigations
- (1) Both Title 18 and Title 31 provide for civil penalties in relation to money laundering violations.
- 9.5.13.3.1
(08-26-2020)
Penalties For Title 18 Money Laundering Investigations
- (1) Title 18 USC 1956(b) provides that violators under 18 USC 1956(a)(1) or (a)(3), or 18 USC 1957 are also liable for a civil penalty of not more than the greater of \$10,000 or the value of the property, funds, or monetary instruments involved in the transaction. The civil penalty is intended to be imposed in addition to any criminal fine.
- (2) Title 12 USC 1829 provides that individuals convicted of 18 USC 1956 or 18 USC 1957 shall be precluded from all affiliation with a FDIC insured institution, including employment or ownership, for a minimum of 10 years from the date of conviction.
- 9.5.13.3.2
(08-26-2020)
Civil Penalties in Title 31 Investigations
- (1) Civil penalty assessments for Title 31 violations are assessed by the Secretary of the Treasury. The statute of limitations for such assessments expires six years from the date of the transaction that is the basis for the civil penalty.
- (2) A civil monetary penalty and a criminal penalty may be imposed for the same Title 31 violation.
- (3) The civil penalties are as follows:
- a. 31 USC 5321(a)(1) - willful violation of any reporting requirement under Title 31 (except for foreign financial accounts and transactions). This section provides that a domestic financial institution or nonfinancial trade or business, and any partner, director, officer, or employee thereof, who willfully violates any reporting requirement provision under Title 31, may be assessed a penalty not to exceed the greater of the amount involved in the transaction (up to \$100,000) or \$25,000.
 - b. 31 USC 5321(a)(2) - failure to file a CMIR or filing a CMIR with a material omission or misstatement. A person who violates this section may be assessed a civil penalty up to the amount of the monetary instrument involved, to be reduced by the amount of any related forfeiture.
 - c. 31 USC 5321(a)(3) - failure to file a report related to foreign currency transactions or failure to comply with a 31 USC 5320 injunction. This section provides that a person who does not file a report related to

- foreign currency transactions or has failed to comply with a 31 USC 5320 injunction may be assessed a penalty up to \$10,000.
- d. 31 USC 5321(a)(4) - structuring of transactions. This section provides that a person who willfully structures transactions in violation of any provision of 31 USC 5324 may be assessed a penalty up to the amount of the currency or monetary instruments involved, to be reduced by the amount of any related forfeiture.
 - e. 31 USC 5321(a)(5) - willful violations related to reports and recordkeeping requirements for foreign financial accounts and transactions (excluding foreign currency transactions). A person who willfully fails to file a Report of FBAR or files an FBAR with a material omission or misstatement or does not make and retain records for interests in foreign financial accounts, may be assessed a penalty that is the greater of \$100,000 or 50% of the account balance. See IRM 4.26.16.6.5 and IRC 5321(a)(5)(c). Additionally, there is a non-willful penalty of \$10,000. See IRM 4.26.16.6.4 and IRC 5321(a)(5)(B).
 - f. 31 USC 5321(a)(6) - negligent violation of any reporting or recordkeeping requirement of Title 31. This section provides for a penalty assessment of up to \$500 on any financial institution or nonfinancial trade or business which negligently violates any reporting or recordkeeping requirements of Title 31, as well as a \$50,000 penalty assessment for a pattern of negligent activity by a financial institution or nonfinancial trade or business.
 - g. 31 USC 5321(a)(7) - penalties for international counter money laundering violations. This section imposes a monetary penalty in an amount that is not less than two times the amount of the transaction, but not more than \$1,000,000, on any financial institution or agency that violates any provision of subsection (i) or (j) of 31 USC 5318 - Prohibition on United States correspondent accounts with foreign shell banks, or any special measure imposed under 31 USC 5318A.
 - h. 31 USC 5330(e) - failure to register a money-transmitting business. This section imposes a \$5,000 penalty each time a person fails to comply with the registration requirements for money transmitting businesses under 31 USC 5330.
 - i. 12 USC 1955 - willful violation of recordkeeping requirements. This section provides that any person or partner, director, officer, or employee of a domestic financial institution who willfully or through gross negligence violates any regulation under 12 USC Chapter 21, Financial Recordkeeping, may be assessed a penalty up to \$10,000.

Note: Each day a person fails to comply with the registration requirements constitutes a separate violation.

- (4) Recommendations for civil penalties can be made at any time, but should not jeopardize an ongoing criminal investigation. A recommendation should not contain grand jury material, and must specifically state that “ information contained herein does not include grand jury material.”
- (5) Tax information can only be released if a related statute call has been made (see IRM 9.3.1, Disclosure). If it has, it should be communicated to FinCEN Enforcement Division, so that it is recognized that 26 USC 6103, tax disclosure rules, must be followed regarding subsequent use.

9.5.13.3.2.1
(08-26-2020)
**Title 31 Civil Penalties
Assessed Against a
Financial Institution**

- (1) When CI has determined that Title 31 civil penalties are warranted against a financial institution, a detailed report should be submitted to the Director, Operations Policy and Support (CI:OPS), for compliance coordination with the Associate Director, Enforcement Division, FinCEN. The report should identify the financial institution and each partner, officer, director, or employee against whom the penalty recommendation is made. Paragraphs (4) and (5) of subsection 9.5.13.3.2, also apply. Effective April 14, 2003, FinCEN delegated to the IRS SB/SE authority to enforce FBAR compliance including collection of civil penalties under 31 USC 5321 (a)(5).
- (2) The attorney for the government and the Associate Director, Enforcement Division, FinCEN may decide that the assessment of a civil penalty in a Title 31 investigation is appropriate in lieu of prosecution. Field offices will advise the Director, Operations Policy and Support, CI:OPS, as soon as an agreement has been negotiated. If checks are received from a financial institution as payment for the civil penalties prior to assessment, the checks should be mailed to the Associate Director, Enforcement Division FinCEN, 2070 Chain Bridge Road, Suite 200, Vienna, Virginia 22182, along with a copy of any court order with respect to the stipulation for settlement. The field office should follow up with a recommendation for civil assessment. See subsection 9.5.13.3.2, for items needed in a report recommending civil penalties for Title 31 investigations resulting in an indictment.

9.5.13.4
(08-26-2020)
**Responsibility for the
Civil Statute of
Limitations in a Grand
Jury Investigation**

- (1) If the tax returns under criminal investigation are under the control of another operating division at the time CI's participation in a grand jury is authorized, the other operating division that transferred the returns to CI is responsible for the civil statute of limitations. If there is no civil involvement before the start of a grand jury investigation and a Rule 6(e) order is not obtained, CI is not responsible for the civil statutes.

9.5.13.5
(08-26-2020)
Offers in Compromise

- (1) An OIC is a binding agreement between the IRS and a taxpayer that legally compromises taxes owed. This means that the IRS will accept less than the full amount a taxpayer owes in certain circumstances. IRS has centralized the filing of all offers in compromise through either the Brookhaven IRS Campus or the Memphis IRS Campus, depending upon the state where the taxpayer resides. The SB/SE oversees the OIC process and each site is placed organizationally under a SB/SE Director of Compliance Services.
- (2) Criminal Investigation is concerned with the following types of civil offers in compromise associated with a criminal investigation:
 - a. offers involving joint investigations by CI with the other operating divisions after the criminal aspects are completed
 - b. offers made while criminal proceedings are pending

9.5.13.5.1
(08-26-2020)
**Offers in Pending
Criminal Investigations**

- (1) The SB/SE, Technical Support Advisory is responsible for coordination of all civil enforcement actions on cases under criminal investigation. Policy Statement 4-26 (formally P-4-84) requires balancing the civil and criminal aspects of investigations to maximize civil enforcement without imperiling criminal prosecution.
- (2) The special agent, who placed controls, should be notified of the pending offer. The process examiners and offer examiners (individuals who process the offers) must contact the special agent before any contact with the taxpayer

regarding a filed offer. In the event there is doubt as to whether a proposed civil action would imperil prosecution, the field office should consult with CT Counsel. See IRM 5.1.5, Balancing Civil and Criminal Cases, on the Technical Support, Advisory Responsibilities regarding cases under criminal investigation.

- (3) In situations relating to offers in compromise in which there is either:
 - a. pending litigation; or
 - b. in which litigation will ordinarily arise (this includes investigations in which a recommendation for prosecution has been made)

The DOJ has settlement authority once a referral has been made to DOJ.

- (4) Criminal Tax Counsel may request an examination or investigation of a subject's financial status in connection with an offer in compromise submitted in a case in which criminal proceedings are pending in CI, DOJ Tax Division, or the US Attorney's Office. Criminal Investigation will conduct the investigation jointly with the examination function of the appropriate operating division.
- (5) Reports of joint investigations of a subject's financial status in connection with an offer in compromise are of such varied type that no format is prescribed. Special agents preparing such reports will be guided by the particular request.

9.5.13.6
(08-26-2020)
**Jeopardy and
Termination
Assessments**

- (1) Criminal Investigation is responsible for recommending jeopardy or termination assessments in active CI investigations and in active investigations under joint consideration with the other operating divisions.
- (2) Jeopardy assessments are authorized by 26 USC 6861 and 26 USC 6862. Title 26 USC 6861 applies to income, estate, gift, and certain excise taxes when the due date for filing a return and paying the tax has expired. Title 26 USC 6862 applies to taxes other than income, estate, gift, and certain excise taxes whether or not the due date for filing a return and paying the tax has expired. For example, 26 USC 6862 authorizes making a jeopardy assessment on an employment tax return whether or not the return due date has expired.
- (3) Termination assessments authorized by 26 USC 6851 may only be made on income tax liabilities when the collection of tax is in jeopardy before the end of a taxpayer's normal year or before the statutory date the taxpayer is required to file a return and pay the tax.

9.5.13.6.1
(08-26-2020)
**Criteria For Determining
When a Jeopardy or
Termination Assessment
Is Appropriate**

- (1) A jeopardy or termination assessment will be made by the IRS if collection is determined to be in jeopardy because at least one of the following conditions exists:
 - a. The taxpayer is or appears to be planning to depart quickly from the United States or to hide from authorities.
 - b. The taxpayer is or appears to be planning to place property beyond the reach of the government by removing it from the United States, concealing it, dissipating it, or transferring it to other persons.
 - c. The taxpayer's financial solvency is or appears to be in peril. (This does not include investigations where the taxpayer becomes insolvent by virtue of the accrual of the proposed assessment of tax, penalties and interest).
 - d. The taxpayer has more than \$10,000 in cash and refuses to identify the owner. Cash, foreign currency, bearer obligations and any other medium of exchange frequently used in illegal activities and specified as a cash

equivalent will be subject to this rule. With the exception of bearer obligations, which are deemed to have a value, equal to their face amount, cash equivalents will be measured by their fair market value.

- (2) Notwithstanding the existence of one or more of the above-cited conditions, if a jeopardy or termination assessment might cause serious harm or inconvenience to the general public, prior notice should be provided to the appropriate Area Director. If necessary, the Area Director will notify the Division Commissioner. Examples include investigations of banks, newspapers, insurance companies, hospitals, and public utility companies.

9.5.13.6.2
(01-06-2009)
**Jeopardy or Termination
Assessment
Recommendations**

- (1) Form 2644, Recommendation for Jeopardy/Termination Assessment, should be used for jeopardy or termination assessment reports. Emergency situations may be handled orally and later documented in written reports.
- (2) The following information should be submitted in all reports to the extent practicable:
 - a. name, address, and TIN of subject
 - b. tax, penalty, and interest to be assessed by periods
 - c. the nature of the subject's business or activity
 - d. the subject's present financial condition
 - e. information regarding the subject's activity giving rise to the recommendation, such as transfer of assets without consideration
 - f. records or statements with respect to continuing business or personal losses
 - g. filing record of subject
 - h. the subject's record for resisting payment of taxes in the past (collection delays and unpaid taxes)
 - i. the nature and location of the subject's assets and the source(s) of his/her income
 - j. a statement as to the factual basis for the determination of taxable income and a schedule showing how the tax was computed
 - k. any other information having a bearing upon the subject's financial condition, future anticipation of losses, etc.
 - l. information showing whether the subject is, or has been, the subject of a joint investigation and whether criminal prosecution has been, or is likely to be, recommended
 - m. any other information having a bearing upon the subject's financial condition, future anticipation of losses, etc.

9.5.13.6.3
(08-26-2020)
**Approval Process for
Jeopardy or Termination
Recommendations**

- (1) In all reports originating in CI regarding the assertion of a jeopardy or termination assessment, the SAC shall inform the other Operating Division Director with jurisdiction over the assessment, in writing, whether it appears likely that criminal prosecution will be recommended in the investigation and also whether the assertion would imperil the successful investigation if a prosecution recommendation is likely.
- (2) The following management officials must sign Form 2644:
 - a. SSA, CI
 - b. SAC, CI
 - c. Territory Manager(s) who has (have) jurisdiction over the assessment (both operating divisions)

- d. Operating Division Counsel
 - e. Operating Division Director who has jurisdiction over the assessment
- (3) Final approval of any jeopardy or termination assessment rests with the Other Operating Division Director who has jurisdiction over the assessment. The other Operating Division Director must recuse himself/herself from personal involvement in those investigations where:
- a. he/she has had access to grand jury information
 - b. he/she is excluded from personal involvement due to restrictions contained in the Rules of Conduct
 - c. he/she has reasonable cause to exclude himself/herself
- (4) In the event the other Operating Division Director has to recuse himself/herself from personal involvement for reasons prescribed above, any of the following individuals may approve the assessment as long as he/she does not fall within any of the exclusionary situations listed in paragraph 3 above.
- a. Deputy Operating Division Director
 - b. Deputy Commissioner of the other operating division
 - c. Commissioner of the other operating division

9.5.13.6.4
(08-26-2020)
**Jeopardy Assessments
in Actual and Potential
Criminal Tax
Investigations**

- (1) If the recommendation for a jeopardy assessment involves an investigation pending in the field office of the SAC, complete information relative to the recommendation and the action taken will be incorporated in the prosecution recommendation report.
- (2) If the recommendation for a jeopardy assessment involves an investigation in which prosecution has been recommended and the prosecution recommendation report is no longer pending in the field office of the SAC, an original and copies of the report recommending the jeopardy assessment will be prepared. Copies will be distributed in the same manner as the copies of the final report at the time advice is requested as to whether a jeopardy assessment would be prejudicial to the criminal investigation. Another copy, which would normally become part of the file transmitted to either SB/SE, LB&I, TE/GE or W&I, will be held by the SAC for transmittal to the appropriate operating division after the assessment has been made so the other operating division may issue the statutory notice.
- (3) The original prosecution recommendation report recommending a jeopardy assessment will be forwarded, together with a transmittal memorandum from the SAC, to the Director, LB&I (International) for appropriate action. If it was necessary to obtain the comments of other officials, the transmittal memorandum will recite their views regarding the proposed jeopardy assessment. In such cases, the transmittal memorandum will be prepared as an original with copies, and other than the original, distributed in the same manner as the jeopardy assessment report. The copies of the transmittal memorandum should be retained until after assessment action has been taken. A summary of such action shall be noted on the copies prior to distribution. If there is insufficient room, an addendum should be added.
- (4) When DOJ or the attorney for the government does not concur in a jeopardy assessment recommendation in any investigation within their jurisdiction and the recommendation for jeopardy assessment is renewed, reports of the new

circumstances and a request for review of the prior recommendation will be processed in the same manner as set forth above for the original jeopardy assessment report.

- (5) Jeopardy assessments will be withheld in potential criminal tax investigations to the extent necessary to avoid imperiling successful investigations or prosecution of such investigations. On the other hand, in those investigations when such action is warranted it must be taken whenever feasible. The Director, LB&I (International) is responsible for this practice when jeopardy assessment recommendations are submitted for approval. See Policy Statement 4-26 (formally P-4-84).
- (6) The SAC should coordinate with CT Counsel any recommendations for jeopardy or termination assessments which may affect pending criminal investigations. In investigations pending with DOJ, an opinion should be obtained from CT Counsel. In investigations pending with the US Attorney's Office, an opinion should be obtained from the SAC. Telephone authorizations, although normally not desirable, can be obtained in exigent situations. Should the field office which has jurisdiction over the investigation conclude that the assessment would imperil successful criminal prosecution, such assessment will not be made until all the criminal aspects of the investigation which may be imperiled by the action, including appeals, are completed. The recommendation for assessment may, however, be renewed if new circumstances make such action appropriate.
- (7) To prevent premature processing of any documents filed by the subject, the SAC will process requests from the other operating divisions for input procedures of Master File transaction code.

9.5.13.6.5
(08-26-2020)

**Jeopardy and
Termination Assessment
Review Process**

- (1) Title 26 USC 7429, added by the Tax Reform Act of 1976, provides an expedited review of jeopardy and termination assessments. Within five days after the assessment or levy, the IRS must give the taxpayer a written statement of the information relied upon in making the assessment. Pattern Letter P-49 (Rev. 5-78) is used for this purpose and includes a computation of income and tax as an enclosure.
- (2) The taxpayer may request administrative review of the assessment within 30 days after the day the statement is provided or within 30 days after the last day of the period during which the statement is required to be furnished. The IRS has 15 days to complete its administrative review.
- (3) If the IRS finds that the assessment is inappropriate or excessive in amount, it may abate the assessment in whole or in part. If the administrative review is not satisfactory to the taxpayer, he/she may, within 90 days after the earlier of the day the IRS notifies the taxpayer of the review determination or the 16th day after the request for review, bring an action in the US District Court for the district in which he/she resides.
- (4) Within 20 days after the taxpayer begins the action, the US District Court is to make new, independent determinations regarding the reasonableness of the jeopardy or termination assessment, and the appropriateness of the amount assessed. The court can order the IRS to abate the assessment or to re-determine the amount assessed in whole or in part. The Commissioner has the burden of proving whether the jeopardy or termination assessment is reasonable under the circumstances. The taxpayer has the burden to refute the rea-

sonableness of the amount assessed; however, the IRS will provide a written statement as to how the amount was determined. Any determination made by the court is not reviewable. A determination under 26 USC 7429 has no effect upon the determination of a correct tax liability in a later proceeding.

- (5) The 20-day period may be extended by the court for up to an additional 40 days, but only at the request of the taxpayer, if the taxpayer establishes reasonable grounds for such an extension.

9.5.13.7
(08-26-2020)
**Reporting Derogatory
Information Relating to
Attorneys, Certified
Public Accountants, and
Enrolled Agents**

- (1) Special agents who have reason to believe an attorney, CPA, enrolled agent or enrolled actuary has violated any provisions of the laws or regulations governing practices before the IRS or receives information to that effect, will make a written report which will be immediately forwarded through the SAC to the Office of Professional Responsibility (OPR). (See Treasury Department Circular 230). The Office of Professional Responsibility is to be notified regarding the misconduct as soon as practical without compromising the criminal investigation or prosecution (see Exhibit 9.5.13-2).
- (2) Types of misconduct as defined in 31 CFR 10.51 which are to be referred to OPR ranges from:
- a. misconduct that arises while representing a taxpayer
 - b. misconduct arising from the practitioner's own return
 - c. misconduct not directly involving IRS representation
 - d. contemptuous conduct, including using abusive language and making false allegations
 - e. misappropriation of client funds
 - f. criminal convictions under the Internal Revenue laws or any offense involving dishonesty or breach of trust
 - g. influence or attempts to influence the official action of IRS personnel
 - h. threats against IRS personnel
- (3) Pertinent information regarding the unethical practices of an attorney, CPA, enrolled agent, or enrolled actuary is to be forwarded to OPR. This information should include a copy of the prosecution recommendation report along with any documentation or exhibits which substantiate each specific violation, to enable OPR to fully understand the basis of the alleged violation. In addition, the following information is to be included:
- professional status or title
 - full name and alias or aliases
 - date and place of birth
 - last known home and business address
 - telephone number
 - taxpayer identification number (SSN) or employer identification number
 - CI investigation number
 - date and place of arrest, information or indictment, and the ultimate disposition of the case

If a practitioner is convicted and sentenced, promptly send a copy of the judgment and commitment order to the OPR.

- (4) Any misconduct involving IRS employees, attempt to influence IRS employees, and/or threat against IRS personnel is to be immediately reported to the Office of TIGTA who will be responsible for notifying OPR (see IRM 9.5.11, Other Investigations).

- (5) If the investigation does not result in prosecution, a copy of the prosecution recommendation report will be forwarded, through the SAC, to OPR, together with such documentation or exhibits obtained during the investigation which substantiates each specific violation, to enable OPR to fully understand the basis of the alleged violation. If grand jury secrecy provisions prohibit forwarding closing reports, forward a copy of the indictment if the investigation progresses to that stage.
- (6) If a prosecution results in a conviction, at such time as the criminal aspects of the investigation are completed, a copy of the prosecution recommendation report will be forwarded through the SAC, to OPR (see Exhibit 9.5.10-2).
- (7) If there is available information indicating an attorney, CPA, enrolled agent, or enrolled actuary is engaged in actual practice before IRS, advise OPR of such information. This should include a copy of any Form 2848, Power of Attorney in possession of the referring field office.
- (8) Referrals should be sent to:
Office of Professional Responsibility
Headquarters, Attention: N:C:SC:OPR
1111 Constitution Avenue, NW
Washington, DC 20224
Unless the referral is a large package, it can be emailed to OPR@irs.gov.

9.5.13.7.1
(01-06-2009)
**Application for Enrolled
Agent Status**

- (1) Applications for enrollment to practice before the IRS (Form 23) are processed by the OPR in accordance with Treasury Department Circular No. 230. For those individuals who established eligibility for enrollment by completion of the Special Enrollment Examination, OPR forwards a listing of the successful candidates to Area Support Manager and/or PSP Return Preparer Coordinator. The list is reviewed and circulated to the appropriate operating divisions to determine whether there exists any derogatory information about the successful examinees that should be considered before granting enrollment to practice before the IRS. The list of successful candidates is furnished to CI to determine if any candidate was the subject of a criminal investigation. Any derogatory information is then returned to OPR.
- (2) Applications for enrollment received from former employees of IRS are forwarded to TIGTA with a request for any information relative to the applicant. Simultaneously, the application is forwarded to the applicant's last IRS office of employment with a request for a recommendation from the supervisor of the particular IRS operating divisions as to whether that employee is or is not technically or otherwise qualified for enrollment. If it is determined that the employee is not qualified for enrollment, a detailed report is to be submitted to OPR explaining why such a determination was made.
- (3) To maintain active enrollment to practice before IRS, each individual enrolled is required to have his/her enrollment renewed as set forth in section 10.6 of Treasury Department Circular No. 230.

9.5.13.7.2
(02-09-2005)
**Reporting Derogatory
Information Relating to
Unenrolled Agents (REV.
PROC 81-38)**

- (1) Special agents who have reason to believe an unenrolled agent has violated any provision of the laws or regulations governing practices before the IRS, or receives information to that affect, will make a written report to be immediately forwarded through the SAC to the appropriate IRS Area Manager who determines the practitioner's eligibility to engage in limited practice before all levels of the IRS.

Exhibit 9.5.13-1 (08-26-2020)**Civil Penalties**

Special agents should be alert to violations which may subject the violators to other civil penalties as set out in IRM 20.1, Penalty Handbook. The chart below contains a very brief overview of some of the more common penalties. For specific information, explanations, and criteria for assessment of these penalties and others, (see IRM 20.1, Penalty Handbook).

Exhibit 9.5.13-1 (Cont. 1) (08-26-2020)
Civil Penalties

United States Code	DESCRIPTION	PENALTY
26 USC 6651(a)(1)	Failure to timely file	Penalty 5 percent to 25 percent of the tax due depending on the duration of the delinquency.
26 USC 6651(a)(2)	Late Payment Penalty	1/2 of 1 percent per month, not to exceed 25 percent.
26 USC 6652	Failure to file statements of the amount of payments to another person (Dividends, Tips, Exempt Org., Trusts, Pension Plans, etc.)	Miscellaneous penalties ranging from \$1 to \$50,000 for the calendar year.
26 USC 6656	Failure to deposit taxes	In general, up to 10 percent of the underpayment.
26 USC 6657	Bad checks tendered not in good faith	The lesser of: —2 percent of amount of check with a minimum of \$25, or —the amount of check.
26 USC 6662	Negligence or disregard of rules or regulations/Accuracy-Related Penalty	20 percent of the appropriate portion of underpayment due to negligence.
26 USC 6663	Fraud Penalty	75 percent of the underpayment due to fraud.
26 USC 6672	Failure to collect, account, or pay over a tax—or attempted evasion of the tax	100 percent of the tax required to be paid or to be collected on behalf of the government.
26 USC 6674	Failing to furnish statement or willfully furnishing fraudulent withholding statements	\$50 for each offense.
26 USC 6675	Making excessive claims with respect to gasoline or lubricating oil	The greater of double the excessive amount claimed or \$10.
26 USC 6677	Failure to file required returns on transfers to foreign trusts or report the information required	For returns other than those filed under 6048(b), 35 percent of the gross reportable amount plus up to \$10,000 for each 30 day period beyond 90 days after notice (for returns filed under 6048 (b), a 5% penalty applies).
26 USC 6679	Failure to file required return about organizing or acquiring stock of a foreign corporation or partnership from	\$10,000 to \$50,000.

Exhibit 9.5.13-1 (Cont. 2) (08-26-2020)
Civil Penalties

26 USC 6682	Supplying false information with respect to the withholding tax allowance	\$500.
26 USC 6694(a)	Understatement of taxpayer's liability by an income tax preparer	The greater of \$1,000 or 50% of the income derived (or to be derived) by the tax return preparer from the preparation of a return or claim with respect to which the penalty was imposed.
*26 USC 6695(a)	Failure of preparer to furnish copy of return to taxpayer	\$50 per failure not to exceed a maximum of \$25,000.
*26 USC 6695(b)	Failure of preparer to sign return	\$50 per failure not to exceed a maximum of \$25,000.
*26 USC 6695(c)	Failure of preparer to furnish identifying number	\$50 per failure not to exceed a maximum of \$25,000.
*26 USC 6695(d)	Failure of preparer to keep copies of returns prepared or to maintain a listing of clients	\$50 per failure not to exceed a maximum of \$25,000.
*26 USC 6695(e)(1)	Failure of preparer to file employee returns as required by IRC 6060	\$50 per failure not to exceed a maximum of \$25,000.
*26 USC 6695(e)(2)	Failure of the preparer to provide all information on return required by IRC 6060	\$50 per item not to exceed a maximum of \$25,000.
*26 USC 6695(f)	Endorsing or negotiating a tax refund check by the preparer	\$500 per each check.
*26 USC 6695(g)	Failure to be diligent in determining eligibility for earned income credit	\$100 for each failure.
26 USC 6701	Aiding and abetting the understatement of another's tax liability	\$1,000 per offense (\$10,000 if it relates to a corporation).
26 USC 6702	Filing a frivolous tax return	\$5000.

Note: *All of the 6695 code sections are subject to annual inflation, check IRM 20.1.6 Exhibit 1 for current rates.

Exhibit 9.5.13-2 (08-26-2020)

Memorandum for Office of Professional Responsibility



Criminal Investigation

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224MEMORANDUM FOR OFFICE OF PROFESSIONAL RESPONSIBILITY
(N:C:SC:OPR)THRU: SAC full name
Special Agent in Charge
Field Office Name, Field Office Symbols
Criminal InvestigationTHRU: SSA full name
Supervisory Special Agent
Field Office Name, Field Office Symbols
Criminal InvestigationFROM: SA full name
Special Agent
Field Office Name, Field Office Symbols
Criminal InvestigationSUBJECT: Referral of Information Concerning:

Full Name
SSN:
Occupation
Home Address
Business Address
Phone Number
CI Investigation Number

This allegation resulted in:

- ☐ No criminal investigation being initiated.
- ☐ A criminal investigation, but no prosecution recommendation.
- ☐ A prosecution recommendation which did not result in a conviction.
- ☐ A prosecution recommendation and a conviction.

The report of findings and exhibits are:

Exhibit 9.5.13-2 (Cont. 1) (08-26-2020)**Memorandum for Office of Professional Responsibility**

- ☐ included, as this was an administrative investigation. Copies of public filings in the criminal case (information/indictment, plea agreement, trial exhibits, judgement and commitment order) are attached.
- ☐ not included due to grand jury secrecy. A summary of non-grand jury information is attached. Copies of public filings in the criminal case (information/indictment, plea agreement, trial exhibits, judgement and commitment order) are attached.

The following information is known regarding Mr./ Mrs./ Miss Full Name's practice before the Internal Revenue Service:

- ☐ No information known
- ☐ Known to practice before IRS (check box below as to supporting documentation)
- ☐ No supporting documentation
 - ☐ Power of Attorney (see attached POA)
 - ☐ Letter/Facsimile (see attached documents)
 - ☐ Personal knowledge or personal dealings (explain)

If any additional assistance is needed, please contact Special Agent _____ at _____
or Supervisory Special Agent _____ at _____

Attachments:

Copy of Special Agent's Report & Exhibits
Copy of Judgment and Probation/Commitment Order
Copy of Documentary Evidence
Copy of Indictment

cc:

