



EFFECTIVE DATE

(07-09-2024)

PURPOSE

- (1) This transmits revised IRM 9.6.2, Plea Agreements and Sentencing Process - Criminal Investigation.

MATERIAL CHANGES

- (1) Added Internal Controls to be compliant with IRM 1.11.2.2.4, Address Management and Internal Controls and IRM 1.4.2, Resource Guide for Managers Monitoring and Improving Internal Controls.
- (2) Updated entire subsection 9.6.2.2.1.1 to current procedures.
- (3) Subsection 9.6.2.2.1.2(a) added “and have to be conducted by either the respective US Attorney’s Office or by the DOJ, Tax Division.”
- (4) Removed 9.6.2.2.1.2(d) “Plea negotiations have to be conducted by either the respective US Attorney’s office or by DOJ, Tax Division.”
- (5) Subsection 9.6.2.2.1.2(g) removed the last line “CI must have sufficient evidence to constitute a referable matter to DOJ.”
- (6) Added subsection 9.6.2.2.1.2(2) “The SA should review all records in enough detail to ensure that there are no significant undiscovered issues or tax losses in the investigation that have not been taken into account in assessing the merits of the referral to DOJ, Tax Division.”
- (7) Added subsection 9.6.2.2.1.2(3) “The SA should secure and review the taxpayer’s returns for all years subsequent to the years under investigation and any open prior years to address any issues raised by those returns in assessing the merits of the referral.”
- (8) Removed subsection 9.6.2.2.1.2(4) “The investigating SA should review all records in enough detail to ensure that there are no significant undiscovered issues or tax losses in the investigation that have not been taken into account in assessing the merits of the referral to DOJ, Tax Division.”
- (9) Removed subsection 9.6.2.2.1.2(5) “The SA should secure and review the taxpayer’s returns for all years subsequent to the years under investigation and any open prior years to address any issues raised by those returns in assessing the merits of the referral.”
- (10) Removed subsection 9.6.2.2.1.2(6) “The SA should inquire and obtain the details, if appropriate, as to any other (open or closed) Federal, state, or local investigations relating to the taxpayer.”
- (11) Subsection 9.6.2.2.2(1) added “of the plea agreement”.
- (12) Added subsection 9.6.2.2.2(4) “The taxpayer will be expected to cooperate with the IRS in the determination and satisfaction of his/her criminal and civil tax liabilities.”
- (13) Subsection 9.6.2.2.3(2)(a) updated physical address.
- (14) 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 9.6.2, Plea Agreements and Sentencing Process, dated March 08, 2021.

AUDIENCE

Criminal Investigation (CI)

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9.6.2

Plea Agreements and Sentencing Process

Table of Contents

9.6.2.1 Program Scope and Objectives

9.6.2.1.1 Background

9.6.2.1.2 Authorities

9.6.2.1.3 Roles and Responsibilities

9.6.2.1.4 Program Management and Review

9.6.2.1.5 Program Controls

9.6.2.1.6 Terms and Acronyms

9.6.2.1.7 Related Resources

9.6.2.2 Proposed Plea Agreement Situations

9.6.2.2.1 Administrative Investigations

9.6.2.2.1.1 Investigations Processed under the Expedited Plea Program Procedures (Tax Division Directive 111)

9.6.2.2.1.2 Procedures Prior to Criminal Tax Counsel Pre-Referral Assistance

9.6.2.2.1.3 Pre-Referral Assistance From Criminal Tax Counsel

9.6.2.2.2 Grand Jury Investigations

9.6.2.2.3 Prosecution Recommendation Report

9.6.2.2.4 Pleas Involving Title 18 Seizures and Forfeitures

9.6.2.3 Concurrence or Non-concurrence of Special Agent in Charge Regarding Prosecution Reports

9.6.2.4 Restitution in Plea Agreements

9.6.2.5 Sentencing Process

9.6.2.5.1 Communication with Probation Officers

9.6.2.5.2 Costs of Prosecution

9.6.2.1
(07-09-2024)
Program Scope and Objectives

- (1) This section provides guidelines and procedures for processing referrals in proposed plea agreement situations. These procedures are designed to assist a taxpayer currently under investigation, who is represented by counsel, to negotiate a plea agreement.
 - a. The sentencing process follows after a defendant signs a plea agreement, enters a guilty plea, or is found guilty as the result of a trial.
 - b. The section also provides guidance to the special agent for communication with probation officers.
 - c. This section contains the following topics:
Proposed Plea Agreement Situations,
Concurrence or Non-Concurrence of Special Agent in Charge Regarding Prosecution Reports,
The Sentencing Process.
- (2) Audience: All CI employees.
- (3) Policy Owner: Director, Global Financial Crimes & Policy.
- (4) Program Owner: Director, Global Financial Crimes & Policy.
- (5) Primary Stakeholders: Special Agents (SA), Supervisory Special Agents (SSA), and Criminal Tax Counsel (CTC).
- (6) Contact Information: To recommend changes to this IRM email CIHQIRM@ci.irs.gov.
- (7) Goal: To provide guidelines and procedures for processing referrals in proposed plea agreement situations.

9.6.2.1.1
(07-09-2024)
Background

- (1) The IRS Restructuring and Reform Act of 1998 resulted in a complete restructuring and reformatting of the IRM to align with IRS business processes. One of the primary goals of IRS modernization was to restore and maintain the IRM as the single, official compilation of IRS policies, procedures, and guidelines. The IRM is the primary source of instructions to staff.

9.6.2.1.2
(07-09-2024)
Authorities

- (1) See IRM 9.1.2, Authority for delegated authority relating to IRM 9.6.2, Plea Agreements and Sentencing Process.

9.6.2.1.3
(07-09-2024)
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.

9.6.2.1.4
(07-09-2024)
Program Management and Review

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

9.6.2.1.5
(07-09-2024)

Program Controls

- (1) The Director, Global Financial Crimes & Policy will review the instructions and guidelines relating to proposed plea agreements, sentencing processes and other IRS documents for procedural, operational, and editorial changes.

9.6.2.1.6
(07-09-2024)

Terms and Acronyms

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

Term/Acronym	Definition
AUSA	Assistant United States Attorney
CEM	Criminal Evaluation Memo
CI	Criminal Investigation
CT	Criminal Tax
CTC	Criminal Tax Counsel
DOJ	Department of Justice
DFO	Director, Field Operations
Fed. R. Crim. P.	Federal Rules of Criminal Procedure
IC	Internal Controls
IRS	Internal Revenue Service
LEM	Law Enforcement Manual
SA	Special Agent
SAC	Special Agent in Charge
SAR	Special Agent Report
SSA	Supervisory Special Agent
TEOAF	Treasury Executive Office of Asset Forfeiture
USC	United States Code
US PO	United States Probation Officer

9.6.2.1.7
(07-09-2024)

Related Resources

- (1) IRM 9.4.1, Investigation Initiation,
 (2) IRM 9.5.14, Closing Procedures,
 (3) IRM 9.6.4, Trial,
 (4) Tax Division Directive No. 111.

9.6.2.2
(03-08-2021)

Proposed Plea Agreement Situations

- (1) A taxpayer may enter into a plea agreement with the government at any stage of an investigation. CI does not have authority to initiate plea negotiations with the taxpayer because this authority rests solely with the Department of Justice (DOJ). A taxpayer must be represented by counsel to initiate plea discussions or negotiations.

Note: If a taxpayer is not represented by counsel and expresses an interest in plea negotiation discussions, advise the taxpayer that they must be represented by counsel in order to participate.

9.6.2.2.1
(07-21-2004)
**Administrative
Investigations**

- (1) In an administrative investigation involving legal source income, when a taxpayer, through counsel, expresses a desire to participate in the expedited plea program, inform the taxpayer and his/her counsel that the willingness to enter into plea negotiations with DOJ in no way reduces the taxpayer's ultimate civil tax liability.

9.6.2.2.1.1
(07-09-2024)
**Investigations
Processed under the
Expedited Plea Program
Procedures (Tax
Division Directive 111)**

- (1) This program was designed to accommodate both the interests of the taxpayer who desired a speedy resolution to a criminal tax investigation and the interests of the government in obtaining a fair resolution of the case with a minimum expenditure of investigative and prosecutorial resources.
- (2) The program is intended to dispose expeditiously of the entire case. It is not intended to be utilized to limit the taxpayer's exposure by curtailing or limiting the Service's investigation.
- (3) This program applies only to administrative investigations involving legal source income.
- (4) The request for initiation of plea discussions or negotiations must be originated by a taxpayer who is represented by counsel; Criminal Investigation Division shall not initiate the subject of plea discussions.
- (5) These investigations do not require the same degree of preparation as normal administrative tax investigations since they will not go to trial.
- (6) The IRS must obtain sufficient evidence to constitute a referable matter to the Tax Division.
- (7) Any referral to the DOJ Tax Division for review of the proposed plea under the program must reflect the following:
 - a. For the years included in the investigation, the taxpayer has provided all records in his/her possession, or to which the taxpayer has access, to the Service;
 - b. The investigating agent has reviewed those records with sufficient particularity to ensure that there are no significant undiscovered issues or tax losses in the case that have not been taken into account;
 - c. A description of the nature and extent of the records supplied, and the conclusions reached by the agent with respect to them;
 - d. That the taxpayer has submitted to an interview, the substance of the interview, and the agent's satisfaction with the nature and extent of the taxpayer's cooperation;
 - e. The agent has inquired, and obtained the details, if appropriate, as to any other (open or closed) Federal, state, or local investigations relating to the taxpayer.
- (8) Taxpayers requesting use of the expedited plea program procedure will be expected to cooperate with the IRS in the determination and satisfaction of his/her criminal and civil tax liabilities.

- (9) In the event the criminal investigation is completed by use of these procedures without establishing the appropriate civil deficiencies, the appropriate operating division of the IRS will complete the civil investigation.
- (10) No plea negotiations may be undertaken until prosecution is authorized by the Tax Division.
- (11) If plea negotiations are unsuccessful, the United States Attorney's office will notify in writing both the taxpayer's counsel and the Tax Division that the case is being returned to the Internal Revenue Service (IRS).

9.6.2.2.1.2
(07-09-2024)

**Procedures Prior to
Criminal Tax Counsel
Pre-Referral Assistance**

- (1) When a taxpayer, represented by counsel, expresses a desire to negotiate a plea agreement prior to the formal completion of an administrative investigation, the Special Agent (SA) will advise the taxpayer's counsel of the following:
 - a. Authority to engage in plea negotiations rests exclusively with DOJ and have to be conducted by either the respective US Attorney's Office or by the DOJ, Tax Division.
 - b. Counsel for the taxpayer must provide a written statement to CI confirming the taxpayer's desire to engage immediately in plea negotiations with DOJ. The IRS will make a referral to DOJ by forwarding the written proposal to enter a plea of guilty to the charges being investigated. If approved by DOJ, Tax Division, it will be referred to the appropriate US Attorney's office for plea negotiations.
 - c. The taxpayer must be informed that he/she will be required to plead to the most significant violation involved, consistent with the Tax Division's Major Count Policy.
 - d. The taxpayer must submit to an interview by the SA and anything said or any information furnished can be used against the taxpayer in a criminal prosecution, as well as in any civil settlement.
 - e. The taxpayer must provide all records or information in his/her possession or to which the taxpayer has access, to the IRS for the years involved.
 - f. The charges being investigated and any proposal to enter into plea negotiations can be referred to DOJ, Tax Division only after CI is able to corroborate the elements of the offense being investigated or the admissions being made by the taxpayer (e.g., gross income in a 26 USC 7203 investigation or documentation relating to an unreported material matter in a 26 USC 7206(1) investigation, etc.).
- (2) The SA should review all records in enough detail to ensure that there are no significant undiscovered issues or tax losses in the investigation that have not been taken into account in assessing the merits of the referral to DOJ, Tax Division.
- (3) The SA should secure and review the taxpayer's returns for all years subsequent to the years under investigation and any open prior years to address any issues raised by those returns in assessing the merits of the referral.

9.6.2.2.1.3
(03-08-2021)

**Pre-Referral Assistance
From Criminal Tax
Counsel**

- (1) If CI determines that a referral for plea negotiations would be in the best interests of the government, CT Counsel will be contacted for pre-referral assistance on the issues of whether:

- a. The presently available evidence is sufficient to meet the requirements of Fed. R. Crim P. 11(b)(3), specifically that a factual basis exists to support the plea of guilty to each of the counts considered for referral.
 - b. The charges established by the investigation adequately address the crime(s) committed by the taxpayer.
- (2) At the option of the SAC, if CT Counsel concurs with CI that a referral should be made, CT Counsel will contact the taxpayer's counsel orally or in writing to accomplish the following:
- a. Confirm that the taxpayer wants to enter into plea negotiations with DOJ.
 - b. Remind the taxpayer and his/her counsel of the charges being investigated and that the government will only consider a plea that adequately addresses those specific charges, i.e., the government will generally be looking for a plea of guilty to one or more of the specified charges.
 - c. Confirm that the taxpayer is willing to be interviewed by the SA and that the taxpayer will submit all records or information in his/her possession or to which he/she has access to the IRS for the tax years involved.
- (3) If the taxpayer's counsel wants to proceed with negotiations, the SAC or CT Counsel will request the taxpayer's counsel provide a written statement that confirms the taxpayer's wish to immediately engage in plea negotiations with the US Attorney or DOJ, Tax Division.

9.6.2.2.2
(07-09-2024)
**Grand Jury
Investigations**

- (1) The US Attorney's office or DOJ will be responsible for negotiating any plea agreement during a grand jury investigation. If a plea involves tax violations, authorization of the plea agreement must be obtained from DOJ, Tax Division.
- (2) The taxpayer and his/her counsel will be informed that the willingness to enter into plea negotiations with DOJ in no way reduces the taxpayer's ultimate civil tax liability.
- (3) The taxpayer must be informed that he/she will be required to plead to the most significant violation involved, consistent with the Tax Division's Major Count Policy.
- (4) The taxpayer will be expected to cooperate with the IRS in the determination and satisfaction of his/her criminal and civil tax liabilities.

9.6.2.2.3
(07-09-2024)
**Prosecution
Recommendation Report**

- (1) After the written statement is provided and is deemed legally sufficient by CT Counsel, the SA will forward a modified prosecution recommendation report containing the following information:
 - a. The title page of the prosecution recommendation report will state that this matter involves a proposed plea agreement, and is a limited referral to DOJ only for purposes of negotiation, and if possible, finalizing a plea.
 - b. The taxpayer's identification, personal history, and a history of business or income-producing activities.
 - c. The nature of the taxpayer's fraudulent activity and the evidence, including available exhibits, to support acceptance of a plea to the charges under investigation.
 - d. Any indication of non-tax crimes (Federal, state, or local) for which the taxpayer may be or has been under investigation.
 - e. A recommendation for prosecution.

- f. Documentation that the taxpayer and/or the representative have provided all available records for all years involved in the investigation, so it is clear there are no significant undiscovered issues in the investigation which have not been taken into account in assessing the merits of the investigation. This documentation should include all relevant conduct, which is necessary for presentation to the court for sentencing purposes.
 - g. A description of the nature and extent of the records supplied, and the specific conclusions reached by the SA and/or revenue agent who reviewed them.
 - h. Documentation of interview(s) with the taxpayer that reflect a thorough review of the issues in the investigation. (The taxpayer must submit to interview(s)).
 - i. A complete and thorough discussion of the nature and extent of the taxpayer's cooperation.
 - j. A summary and evaluation of the taxpayer's returns for all years under investigation, and subsequent to the years under investigation, addressing any issues raised by those returns in assessing the merits of the investigation. This summary will, where practical, include a computation reflecting the tax ramifications of the taxpayers' actions.
 - k. A discussion as to the potential range of sentences the taxpayer may receive based on the evidence available for use under the Sentencing Guidelines.
- (2) Criminal Tax Counsel will review the prosecution recommendation report for legal sufficiency pursuant to these guidelines. Criminal Tax Counsel will prepare a CEM for the SAC, which reflects CT Counsel's evaluation of the merits of the criminal prosecution. Contained within the CEM will be a section noting CT Counsel's concurrence or nonconcurrence with the prosecution recommendation.
- (3) If it is determined that prosecution is warranted, the SAC will refer the investigation to DOJ, Tax Division, recommending prosecution and the initiation of plea negotiations in accordance with the written request of taxpayer's counsel.
- a. A copy of the prosecution recommendation report with exhibits will be forwarded to:
US Department of Justice, Tax Division
Principal Deputy Assistant Attorney General
150 M Street, N.E.
4 Constitution Square
Mail Stop: 1.1505
Washington, DC 20002

Attn: (Name), Chief
(Northern/Southern/Western) Division Criminal Enforcement Section
(Send to the attention of the appropriate Enforcement Section Chief)
 - b. The SAC will telephone the DOJ liaison attorney to state that such a report is being submitted to their office. The DOJ attorney will contact the SAC by telephone to acknowledge receipt of the report.
- (4) The DOJ, Tax Division has 30 days after receipt of the referral from the SAC to either authorize prosecution consistent with the proposed plea bargain or disapprove the negotiation of such a plea.
- a. If DOJ, Tax Division objects to proceeding with the plea discussions, or the evidence submitted is insufficient to meet the requirements of Tax

Division Directive III, and Fed. R. Crim. P. 11(f), DOJ, the Tax Division will immediately notify the SAC. For administrative investigations, DOJ, Tax Division will then notify the taxpayer's counsel in writing that the investigation is being returned to the IRS and all exhibits and files will be returned to the IRS.

- b. If DOJ, Tax Division authorizes prosecution, it will refer all documents to the appropriate US Attorney's Office, who may then undertake plea negotiations with the taxpayer and his/her counsel. The US Attorney's Office may accept a plea to the specified major count without further authorization from DOJ, Tax Division. If the US Attorney's office desires to accept a plea to any count other than the specified major count, the approval of DOJ, Tax Division is required.

- (5) No information or evidence submitted to the US Attorney by the taxpayer or counsel during the course of plea negotiations will be forwarded to the IRS unless they expressly authorize the IRS' use of such information. In these situations, a written waiver of the Rule 11(f) restrictions should be obtained.
- (6) Upon return of an investigation, the IRS, after considering all relevant facts, will determine whether to continue with the investigation.

9.6.2.2.4
(03-08-2021)
**Pleas Involving Title 18
Seizures and Forfeitures**

- (1) The plea agreement must include a violation of one of the following offenses charged in the indictment or criminal information to ensure forfeitability of the property:
- a. 18 USC 1956,
 - b. 18 USC 1957,
 - c. 18 USC 1960,
 - d. 31 USC 5313(a),
 - e. 31 USC 5316(a),
 - f. 31 USC 5324(a).
- (2) Additional requirements in plea agreements are contained in the TEOAF Directive 17. These Directives can be found on the CI Connections, Warrants and Forfeitures documents page.

9.6.2.3
(03-08-2021)
**Concurrence or
Non-concurrence of
Special Agent in Charge
Regarding Prosecution
Reports**

- (1) The SAC will approve the prosecution recommendation report and make the appropriate referral.
- (2) If the SAC does not approve the recommendation of the SA, the SAC will prepare a memorandum documenting or explaining the reason(s) for not approving the prosecution recommendation report. The memorandum and prosecution recommendation report will be returned to the originating SSA.
- (3) For sensitive investigations (those involving any of the following: a currently serving elected Federal official, a currently serving Article III judge; a currently serving high-level Executive Branch official; a currently serving elected statewide official; a currently serving member of the highest court of the state; a mayor currently serving a population of 250,000 or more; perjury in the US Tax Court; or an exempt organization), the SAC will forward the prosecution recommendation report to the DFO with a brief cover memorandum asking for the concurrence of the DFO. The investigation may not be referred until the written concurrence of the DFO is obtained. (See IRM 9.4.1, Investigation Initiation for sensitive investigations.)

9.6.2.4
(03-08-2021)

Restitution in Plea Agreements

- (1) One of the goals of the criminal prosecution process is having the Court order restitution. Similar to incarceration, restitution acts as a criminal deterrent for would be offenders. Restitution is often ordered in criminal tax cases pursuant to a plea agreement and may be ordered as a component of the sentence or solely as a condition of probation or supervised release.
- (2) It is in the best interest of the Service for the plea to be signed and to specifically address the criminal restitution amounts as a criminal penalty or component of the sentence and not solely as a condition of probation or supervised release. This is especially important for a Title 26 offenses and Title 18 offenses for failure to pay a tax because of the potential limitations placed on the assessment of the restitution and the collection of the restitution.
- (3) In plea cases, the SA and AUSA should examine the language in the plea and work towards language that outlines the defendant's agreement to pay restitution as a criminal penalty.

Note: In light of *United States v. Westbrooks*, 858 F.3d 317, 328 (5th Cir. 2017), vacated and remanded on other grounds, 138 S.Ct. 1323 (2018), in certain situations, particularly for Title 26 offenses and Title 18 offenses for failure to pay a tax, criminal restitution ordered solely as a condition of probation or supervised release severely restricts the assessment and the collection of the restitution. As a result, every effort should be made by the SA and AUSA to ensure the restitution is ordered as an independent part of the sentence and not as a condition of probation or supervised release. See IRM 9.5.14, IRM 9.5.14, Closing Procedures for more.

- (4) Including restitution as part of the plea agreement is an effective method for the AUSA to facilitate civil resolution of a criminal case and the inclusion of the taxpayer's cooperation in the civil settlement as part of the plea agreement. See LEM 9.14.2, Questionable Refund Program for court ordered restitution for refund crimes.

9.6.2.5
(03-08-2021)

Sentencing Process

- (1) The ultimate goal of every criminal prosecution is not merely obtaining a conviction but obtaining a sentence sufficient to discourage similar criminal violations by other taxpayers. Therefore, the SA should devote the same attention and energy to the sentencing process as to the investigation and trial processes.

9.6.2.5.1
(03-08-2021)

Communication with Probation Officers

- (1) Whenever a conviction is obtained, the SA should contact the US Probation Officer assigned to prepare the pre-sentence report, and furnish a copy of the prosecution recommendation report and any other information which may speak to relevant conduct in setting forth the full magnitude of the defendant's conduct.
- (2) Information to be furnished to the probation officer should include, but is not limited to the following:
 - a. An account of the harm caused to the government or other victims.
 - b. An explanation of the applicability of any sentencing factors listed in the Federal Sentencing Guidelines Manual.
 - c. Any indications of any relevant conduct which might be useful to the probation officer in preparing the pre-sentence report and sentencing recommendation.

Note: Relevant conduct includes conduct of the defendant that is outside the offense of conviction, but is part of the same or similar pattern of conduct as the count(s) of conviction. The US Sentencing Guidelines allow for consideration of uncharged conduct in calculating the appropriate sentencing range. The standard of proof necessary to utilize relevant conduct for sentencing purposes is a preponderance of the evidence.

- (3) Upon conviction, the SAR with a prosecution recommendation may be disclosed to a US PO for the purpose of preparing the Presentence Investigation Report, contemplated by Fed. R. Crim. P. 32(c). The disclosure of the SAR with a prosecution recommendation to US POs is authorized by 26 USC 6103(h)(4). However, information contained in the report shall not be disclosed if such disclosure would identify a confidential informant or seriously impair a civil or criminal tax investigation.
- (4) Occasionally, US POs will request tax information from the IRS as part of a pre-sentence investigation in a non-tax criminal matter. Disclosures may be made to probation officers in these circumstances only as provided in 26 USC 6103(c). Treasury Regulation 301.6103(c)-1 provides the format that must be followed in any taxpayer authorization or waiver that is submitted for the purpose of allowing a probation officer to receive tax information.
- (5) The SA must emphasize, to both the probation officer and the AUSA, the importance that CI attaches to the sentence imposed because of the effect it may have on IRS compliance efforts among similarly situated individuals. Similarly, it is vital to point out the importance of including restitution. (See IRM 9.5.14, Closing Procedures.)
- (6) Following a conviction for criminal tax violations, courts in some instances specify the sentence imposed is conditioned upon satisfactory settlement and/or payment of civil liability for taxes and penalties, and the satisfactory payment of restitution. (See IRM 9.5.14, Closing Procedures concerning the conditions of probation in civil tax matters.)
- (7) (7) The SAC will take whatever steps are necessary to initiate appropriate legal action in any instance where the taxpayer has failed to comply with the court ordered conditions of probation or supervised release. Title 26 USC 6103(h)(4) permits the disclosure of information contained in taxpayer delinquent account files to a US PO in consideration of, preparation of, or during a judicial proceeding pertaining to tax administration for the purpose of informing the court of any non-compliance with the terms of the taxpayer's probation, supervised release or sentence.

9.6.2.5.2
(07-09-2024)
Costs of Prosecution

- (1) Title 26 explicitly provides that, in addition to incarceration and fines, defendants convicted of tax offenses "shall" pay "costs of prosecution". The costs that defendants are required to pay are limited to those set out in Title 28 USC 1920. (See IRM 9.6.4, Trial concerning recoverable costs of prosecution for additional information.)

