

344.9 (5-9-80)
Claim and Waiver of Privilege

9781

(1) Generally, except in the case of the informant-Government relationship, the privileges are for the benefit of the person making the communication, may be invoked only on his/her behalf, and may be waived only by him/her. [8 Wigmore (3d Ed.) Secs. 2340, 2341, and 2355] With respect to husband and wife, there is some conflict of authority about who may waive the privilege. Some cases state that the privilege belongs to both spouses and must be waived by both. [*Olender v. U.S.*; *U.S. v. Mitchell*; 8 Wigmore (3d Ed.) Sec. 2343] It has also been held that the privilege is that of the defendant spouse alone, waivable only by him/her. [*Fraser v. U.S.*]

(2) None of the court cases dealing with privileged communications or the privilege against adverse spouse testimony have prohibited the use of such information as investigative leads. A special agent conducting an investigation is not prevented by any rule of evidence from interviewing a spouse, [*U.S. v. Winfree*], attorney, or any other person to whom information has been communicated by a taxpayer. The mere fact that such person's testimony may be inadmissible does not affect the admissibility of the testimony of any other person, not within the privileged relationship, that results from leads obtained by the special agent.

345 (1-18-80)
Admissions and Confessions

9781

345.1 (1-18-80)
Admissions

9781

345.11 (1-18-80)
Definition of Admissions

9781

(1) An admission as applied in criminal cases is the avowal of a fact or of circumstances from which guilt may be inferred but only tending to prove the offense charged and not amounting to a confession of guilt. It is not essential that an admission be contrary to the interest of the party at the time it is made; it is enough if it be inconsistent with the position which the party takes either in pleadings or at the trial.

(2) An admission may be a prior oral or written statement or act of a party. It can be used either as proof of facts or to discredit a party as a witness. An admission can be used only as to

facts not as to matters of law, opinion, or hearsay.

345.12 (1-18-80)
Judicial Admissions

9781

A judicial admission is one made in the course of any judicial proceeding, by pleadings, stipulations, affidavits, depositions, or statements made in open court. Such admissions may always be used against a party even in subsequent actions where there is a different adversary. A plea of guilty can be used as an admission in a civil action arising out of the same subject matter. Thus, a taxpayer's plea of guilty to tax fraud can be used as an admission concerning fraud in a civil suit involving the same acts. A plea of nolo contendere however, is not an admission. The entry of a judgment against a party is not an admission by him/her, since it may have been due to a failure of proof. (Text 323.7:(3) relates to the admissibility of reported testimony of a previous trial.)

345.13 (1-18-80)
Extra-Judicial Admissions

9781

An extra-judicial admission is anything said outside of court by a party to litigation which is inconsistent with facts asserted in the pleadings or testimony in court. It is not limited to facts which are against interest when made, although the weight of an admission is increased if it is against interest at the time.

345.14 (1-18-80)
Implied Admissions

9781

(1) There are certain instances where admissions may be implied from conduct. If something is said by a person which naturally calls for a reply, and if it is heard by a second person who understands it and has the opportunity to, but fails to reply, the failure to reply may constitute an implied admission. [4 Wigmore (3d Ed.) Sec. 1071] Thus, if a special agent discusses his/her findings with a taxpayer (especially in the presence of a third party who can testify about the matter) failure to object to such findings may be used as an admission. This would not apply where the taxpayer remains silent, claiming his/her privilege against self-incrimination.

(2) Although there is no question or dispute regarding admissibility of implied admissions as a rule of law, the facts in every case must be individually applied to this rule to determine if those facts show a duty to reply, as for example, the failure to reply to a letter. It was held in *Leach & Co. v. Pierson*:

"A man cannot make evidence for himself by writing a letter containing the statements that he wishes to prove. He does not make the letter evidence by sending it to the party against whom he wishes to prove the facts. He can no more impose a duty to answer a charge than he can impose a duty to pay by sending goods. Therefore, a failure to answer such adverse assertions in the absence of further circumstances making an answer requisite or natural has no effect as an admission."

345.15 (1-18-80) 9781 **Corroboration of Admissions**

345.151 (1-18-80) 9781 **Corroboration of Admissions Before Offense**

Competent, material, and relevant statements of fact made by a person prior to his/her alleged commission of a crime are admissible against him/her to prove such facts without need for corroborations. [*Warszower v. U.S.*] Admissions made as part of the act of committing an offense are likewise admissible without corroboration. For example, in a prosecution for income tax evasion based upon understated receipts from business, the cost of goods sold and other deductions shown on the tax return are considered admissions by the taxpayer [*U.S. v. Hornstein*; *U.S. v. Stayback*] which need not be corroborated.

345.152 (1-18-80) 9781 **Corroboration of Admissions After Offense**

(1) Unlike admissions made before the offense, extra-judicial admissions made by a person after his/her alleged commission of a crime require corroboration. The reason for this rule, which applies to confessions as well as admissions, is to exclude the possibility of having a person convicted of a crime he/she did not commit, as a result of statements after the offense, induced by duress or other improper means.

(2) Evidence corroborating admissions made after the offense need not prove the offense beyond a reasonable doubt, or by a preponderance of the evidence, but there must be substantial evidence and the evidence as a whole must prove the defendant's guilt beyond

a reasonable doubt. [*Daniel Smith v. U.S.*; *U.S. v. Calderon*; *Olender v. U.S.*] For example, if a taxpayer admits a substantial amount of unreported sales, the taxpayer's admission may be corroborated by evidence that he/she has maintained an unreported business bank account in which he/she has made frequent deposits.

345.16 (1-18-80) 9781 **Post-Indictment Admissions**

In the *Massiah* case, the defendant, who had retained counsel and was free on bail after being indicted for narcotics violations, made certain admissions to a codefendant, not knowing that the codefendant had agreed to be a government witness and that the conversation was being overheard by federal agents who had installed radio equipment in the codefendant's car. The Supreme Court held that admitting into evidence post-indictment conversations between the accused and the informant which were caused by federal agents and done in the absence of the accused's attorney, violated the defendant's right to counsel under the Sixth Amendment. [*Massiah v. U.S.*] Post-indictment admissions made by the defendant to an informant are admissible in a subsequent trial for an unrelated offense. [*Hoffa v. U.S.*]

345.2 (1-18-80) 9781 **Confessions**

345.21 (1-18-80) 9781 **Definition of Confessions**

A confession is a statement of a person that he/she is guilty of a crime. It may be made verbally or in writing, to a court, officer, or to any other person. It may be merely an acknowledgment of guilt, or it may be a full statement of the circumstances.

345.22 (1-18-80) 9781 **Judicial and Extra-Judicial Confessions**

A judicial confession is one made before a court in the due course of legal proceedings, including preliminary examinations. An extra-judicial confession is one made elsewhere than in court, and may be made to any person, official or otherwise.

345.23 (1-18-80)

9781

Admissibility of Confessions

(1) It is essential to the admission of a confession that it be voluntary. An involuntary confession is one which has been obtained by physical or mental coercion, or by threats, or by promises of immunity or reduced sentence made by a person having authority with respect to the prosecution of the accused. The basis for excluding coerced confessions in the Federal courts is that their use violates the due process clause of the Fifth Amendment, which reads:

"... nor be deprived of life, liberty, or property, without due process of law;"

(2) Whether a confession is voluntary depends upon the facts of the case. [22 Corpus Juris Secundum, secs. 817 et seq.] It is not made involuntary and inadmissible because the accused's counsel was not present when it was made, although that fact may be considered. Physical or psychological coercion will invalidate a confession. Falsehood, artifice, or deception may also make it inadmissible. [*Spano v. N.Y.*] The Supreme Court has held that a confession extracted from the defendant by a boyhood friend who falsely represented that his involvement in the case might make him lose his job as police detective and jeopardize the future of his children and his pregnant wife, was an involuntary confession, especially since it came after continuous all-night questioning. An appeal to a person's religious feelings which induces him/her to confess does not invalidate the confession. The fact that a person was intoxicated when he/she confessed does not exclude the confession if he/she had sufficient mental capacity to know what he/she was saying. Expressions such as "you had better tell the truth," "better be frank," and "it will be best for you to tell the truth," could create controversy as to whether they constitute implied threats or promises. [*U.S. v. Abrams*]

(3) Although the Government does not have the burden of proving in the first instance that a confession was voluntarily given, [*Gray v. U.S.*; *Hartsell v. U.S.*] the trial court must ascertain and determine as a preliminary question of fact whether it was freely and voluntarily made, without any sort of coercion or promise of reward or leniency. The accused, if he/she so indicates, must be permitted to introduce evidence of its involuntary character. The accused may give his/her own testimony on this point, or may call and examine third persons, or he/she may

cross-examine the witnesses who are called to testify to the confession or to the circumstances under which it was made. A proper foundation for the admission of a confession is laid where the witness to whom it was made testifies that neither he/she nor anyone in his/her hearing made any promises or threats to the defendant.

(4) Rule 5(a) of the Federal Rules of Criminal Procedure provides that an arrested person must be taken before a magistrate or other committing officer without unnecessary delay. Thus, a confession taken from a person whose arraignment has been delayed unnecessarily so that he/she may be questioned over a period of time is inadmissible. [*McNabb v. U.S.*; *Upshaw v. U.S.*; *Mallory v. U.S.*] The reasoning involved in declaring such confessions inadmissible is stated by the Supreme Court in the Mallory case. The defendant, arrested in the early afternoon, was questioned until 9:30 p.m., when he made his confession, at which time an attempt was made by the arresting officers to locate a committing magistrate, before whom the defendant was taken the following morning. The Court held the confession inadmissible and stated:

"Circumstances may justify a brief delay between arrest and arraignment, as for instance, where the story volunteered by the accused is susceptible of quick verification through third parties. But the delay must not be of a nature to give opportunity for the extraction of a confession."

(5) The mere fact that a confession has been obtained after a person has been arrested does not bar its use at trial. [*U.S. v. James Mitchell*; *U.S. v. Vita*] It is not made inadmissible unless there has been unnecessary delay. No hard and fast rule can be laid down as to what is unnecessary delay. Each case stands on its own facts. [*Holt v. U.S.*; *Williams v. U.S.*] Circumstances will vary from case to case, and from metropolitan areas where there may be several available magistrates to other areas where there may be only one magistrate serving on a part time basis. [*Williams v. U.S.*]

(6) It is not unlawful for Federal officers to detain a suspect a short and reasonable time for questioning. A confession obtained during such detention is admissible, providing the purpose of the detention is investigatory and not simply to hold the suspect until he/she confesses, and the officers have good reason to believe he/she should be questioned to determine whether he/she or any other person ought to be arrested. [*U.S. v. Vita*; *Warren Goldsmith v. U.S.*]

(7) If any part of a confession is given in evidence, the whole must be given if requested by the defendant. A confession made involuntarily is not admissible evidence, and facts discovered in consequence of such confession are also inadmissible. [*Wong Sun v. U.S.*]

(8) A codefendant's extrajudicial confession is inadmissible at a joint trial because of the substantial risks that the jury would look to the statement in determining the defendant's guilt and the defendant is deprived of the right of cross-examination secured by the Confrontation Clause of the Sixth Amendment. [*Bruton v. U.S.*]

(9) The Omnibus Crime Control and Safe Streets Act of 1968 provides:

"18 U.S.C. 3501. Admissibility of Confessions

"(a) In any criminal prosecution brought by the United States or by the District of Columbia, a confession, as defined in subsection (e) hereof, shall be admissible in evidence if it is voluntarily given. Before such confession is received in evidence, the trial judge shall, out of the presence of the jury, determine any issue as to voluntariness. If the trial judge determines that the confession was voluntarily made it shall be admitted in evidence and the trial judge shall permit the jury to hear relevant evidence on the issue of voluntariness and shall instruct the jury to give such weight to the confession as the jury feels it deserves under all the circumstances.

"(b) The trial judge in determining the issue of voluntariness shall take into consideration all the circumstances surrounding the giving of the confession, including (1) the time elapsing between arrest and arraignment of the defendant making the confession, if it was made after arrest and before arraignment, (2) whether such defendant knew the nature of the offense with which he was charged or of which he was suspected at the time of making the confession, (3) whether or not such defendant was advised or knew that he was not required to make any statement and that any such statement could be used against him, (4) whether or not such defendant had been advised prior to questioning of his right to the assistance of counsel; and (5) whether or not such defendant was without the assistance of counsel when questioned and when giving such confession.

"The presence or absence of any of the above-mentioned factors to be taken into consideration by the judge need not be conclusive on the issue of voluntariness of the confession.

"(c) In any criminal prosecution by the United States or by the District of Columbia, a confession made or given by a person who is a defendant therein, while such person was under arrest or other detention in the custody of any law-enforcement officer or law-enforcement agency, shall not be inadmissible solely because of delay in bringing such person before a magistrate or other officer empowered to commit persons charged with offenses against the laws of the United States or of the District of Columbia if such confession is found by the trial judge to have been made voluntarily and if the weight to be given the confession is left to the jury and if such confession was made or given by such person within six hours immediately following his arrest or other detention: Provided, that the time limitation contained in this subsection shall not apply in any case in which the delay in bringing such person before such magistrate or other officer beyond such six-hour period is found by the trial judge to be reasonable considering the means of transportation and the distance to be traveled to the nearest available such magistrate or other officer.

"(d) Nothing contained in this section shall bar the admission in evidence of any confession made or given voluntarily by any person to any other person without interrogation by anyone, or at any time at which the person made or gave such confession was not under arrest or other detention.

"(e) As used in this section, the term 'confession' means any confession of guilt of any criminal offense or any self-incriminating statement made or given orally or in writing."

345.24 (1-18-80)

9781

Corroboration of Confessions

As with an admission, and for the same reasons, it is necessary that a confession be corroborated by independent evidence before it may be admitted. [*Daniel Smith v. U.S.*]

346 (1-18-80)

9781

Techniques of Interviewing

346.1 (1-18-80)

9781

Definition and Purpose of Interviewing

(1) An interview is defined as a meeting between two persons to talk over something special. In investigations it usually includes visiting and holding a formal consultation for the purpose of resolving or exploring issues.

(2) Interviews are used to obtain leads, develop information, and establish evidence. The testimony of witnesses and the confessions or admissions of alleged violators are major factors in resolving tax cases. Cases are presented to a jury through the testimony of witnesses. Therefore, it is the special agent's duty to interview the taxpayer and every witness connected with the case. The record of such interviews will usually take one of the following forms: transcript of interview or question and answer statement, affidavit, memorandum of interview, and recording (tape, wax, etc.).

346.2 (1-18-80)

9781

Authority for Interviewing

(1) *IRC 7602*.—Authorizes the Secretary or his delegate to examine books and records and to take testimony under oath.

(2) *Delegation Order No. 4 (as Revised)*.—Authorizes the special agent to issue and serve a summons, to examine books and records, to question witnesses, and to take testimony under oath.

(3) *Delegation Order No. 37 (as Revised)*.—Authorizes the special agent to administer oaths and to certify such papers as may be

necessary under the internal revenue laws and regulations.

(4) A further discussion of the special agent's authority is contained in text 362.

346.3 (1-18-80) 9781 **Preparation and Planning for Interviewing**

346.31 (1-18-80) 9781 **Preparation**

(1) The special agent must possess the original return or returns involved, if any were filed for the pertinent period, as a prerequisite to independently interviewing a taxpayer, his/her representative, or one of his/her present employees or inspecting the taxpayer's books and records.

(2) Exceptions may be made in cases where an examination is extended to include taxable periods for which the original return is not available and the examination is based on the taxpayer's retained copy, or where such action is approved in writing by the Chief.

(3) The procedure outlined in (1) above is limited to a taxpayer's own tax matters and has no application in an inquiry where an agent is merely securing information from another person, not under tax investigation, but who engaged in transactions with the taxpayer or has data relevant to the tax liability under inquiry.

(4) See also IRM 9323.2.

346.32 (1-18-80) 9781 **Planning**

(1) *Timing*—Proper timing of the interview is essential in obtaining information that is material in resolving a case.

(2) *Review Available Information*—Prior to any interview the agent should review all the information and data he/she possesses relating to the case. Such information may then be divided into three general categories: information which can be documented, and need not be discussed; information which may be documented, but needs to be discussed; information that must be developed by testimony. The interview file should contain only data or information arranged in the order it is to be discussed or covered in the interview. The less data the agent has to cope with during the interview, the easier it will be for him/her to vary the line of questioning. It is very distracting, and may even cause some confusion, for the agent to delay the interrogation to find a document or an item

in a voluminous file. However, the files should contain sufficient data to cover all the matters under discussion, provided it isn't unwieldy.

(3) *Prepare Outline*—Before the interview, the agent should determine the goal of, or purpose for, questioning the subject. The topics that will enable the agent to accomplish this goal should be outlined in more or less detail, depending upon his/her experience and the complexity of the case. The outline should contain only information which is relevant and material (including hearsay). Extraneous matter should be excluded because it may be confusing and may adversely affect the end sought. Important topics should be set off or underscored and related topics listed in their proper sequence. A portion of a suggested outline is shown in Exhibit 300-6 (Suggested Outline for Questioning Person Who Prepared Returns, If Other Than Taxpayer). Specific questions should be kept to a minimum, since they tend to reduce the flexibility of the questioner. In addition to the topics to be discussed, the outline should include the following, if applicable:

- (a) Identification of the subject.
- (b) Information to be given the subject about his/her constitutional rights.
- (c) The administration of the oath.
- (d) The purpose of the interview.
- (e) Questions showing that the subject was not threatened or intimidated in any manner, and that statements were made freely and voluntarily without duress or any promises whatsoever.

(4) *Provide Suitable Surroundings.*

346.4 (1-18-80) 9781 **Conduct of Interview**

(1) *Be Adaptable and Flexible*—The agent should keep an open mind that is receptive to all information regardless of the nature, and be prepared to develop it. If the agent is not flexible, he/she may waste a great deal of time and ask unnecessary questions, resulting in a voluminous statement of little or no value. Although the agent may find it easier to adhere to a fixed pattern of interviewing, or to rely upon a series of questions or topics, rigid adherence to any notes or outline will seriously handicap flexibility. The outline and data should serve only as aids and not as substitutes for original and spontaneous questioning. A carefully planned outline will provide enough leeway to allow the agent to better cope with any situation that may occur and permit development of leads that may arise.

(2) *Follow Through*—Incomplete and irresponsible answers have little or no probative value. Any answer, apparently relative to a pertinent matter, that is not complete and to the point should be followed up by questioning the subject about all knowledge he/she has concerning every facet of the topic. The agent should follow through on every pertinent lead and incomplete answer. The agent should continue asking questions until he/she has all the information he/she can reasonably expect to get.

(3) The following suggestions will help the agent to follow through, and to obtain answers that are complete and accurate:

(a) Use short questions confined to one topic which can be clearly and easily understood.

(b) Ask questions that require narrative answers; avoid "yes" and "no" answers, whenever possible.

(c) Whenever possible avoid questions that suggest part of the answer, i.e., "leading questions."

(d) Question the witness about how he/she learned what he/she states to be fact. The witness should also be required to give the factual basis for any conclusions he/she stated.

(e) Be alert so as to prevent the witness from aimlessly wandering. Where possible, require a direct response.

(f) Prevent the witness from leading the agent far afield. The witness should not be allowed to confuse the issue and leave basic questions unanswered.

(g) Concentrate more on the answers of the witness than on the next question.

(h) To avoid an unrelated and incomplete chronology, the agent should clearly understand each answer and ensure that any lack of clarity is eliminated before continuing.

(i) When all important points have been resolved, terminate the interview; if possible, leave the door open for further meetings with the subject.

(4) The subject should completely answer the following basic questions:

(a) *Who?*—Complete identification should be made of all persons referred to. This includes: description, address, alias, "trading as," "also known as," citizenship, reputation, and associates. If the person cannot be identified by name, a physical description should be requested and should include: age, height, weight, color of eyes, hair, skin, description of

build, clothing, unusual markings, scars, mental or physical defects. Questions should also cover any aids worn by the individual, such as glasses, hearing aid, wig or toupee, cane, braces and other items.

(b) *What?*—Complete details as to what happened. Questions should relate to events and methods and systems. A complete answer should be developed. Trace the event from its inception to its ultimate termination. For example, a sale starts with a customer placing an order, either orally or in writing, and terminates when the payment is ultimately placed in some depository. Every detail concerning what happened to that sale and what happened to every book, record, document, or person connected with it should be determined.

(c) *Where?*—Complete details regarding the location of books, records, assets, bank and brokerage accounts, witnesses, clients, customers, safe deposit boxes, safes, and the like. A description of the location should include the general area, as well as the identification of the person who has custody and control of the item. A complete description of the place should include the size, shape, color, and location.

(d) *When?*—The time can be established by direct questioning, by relating the incident to some known event, or by associating the event to some person, place, or thing.

(e) *How?*—Complete details about how the event occurred, or how the operation was conducted. How did the subject acquire knowledge? Was it through seeing, hearing, feeling, or smelling, or performing duties? How were transactions recorded: written, typed, matching entries, others?

(f) *Why?*—Everything is done for a reason. Determine the motive by questioning the witness about his/her actions. What caused him/her to act? Who caused him/her to act? How was he/she motivated? Since these are the most important questions, especially when relating to or reflecting an evil purpose, they should receive special consideration.

(5) *Maintain Control*

(a) The agent should maintain full control of the interview. He/she usually can accomplish this by limiting each participant to the rights, duties, and privileges he/she is entitled to at the interview. Any deviation should be corrected immediately by informing the individual of his/her role and by not allowing him/her

to go beyond it. If the agent cannot maintain complete control of the interview, he/she should end it and arrange to continue when the situation is corrected. The record should show all the agent's attempts to correct the individual's improper conduct, as well as the agent's reason for terminating the interview before it is completed.

(b) After all persons are informed of why they are present at the interview, the agent should confine their activities to the roles indicated:

1 *Principal*—The principal is called upon to answer questions, and he/she should be permitted to make any explanations in any reasonable manner he/she may desire. He/she should be encouraged to tell his/her side of the case, without interruption. He/she has a right to refuse to answer any question that he/she feels will incriminate him/her. This is a personal right and can be invoked only by the principal.

2 *Witness*—The witness must comply with every request made by the agent that is both legal and reasonable. However, the witness has a right to refuse the request, if he/she feels that the information may incriminate him/her. This right cannot be invoked on the ground that the information will incriminate the defendant or someone else.

3 *Special agent*—The special agent should question the taxpayer about any matters the agent deems relevant to the tax case, unless the agent feels that it would be to the government's disadvantage to ask questions that would reveal particular information. Since the special agent is responsible for the development of evidence, it is his/her obligation to conduct the interview in any manner he/she deems appropriate. If he/she grants permission to a cooperating officer to question the subject, the agent should instruct the officer in the method and technique to be used.

4 *Cooperating Officer*—The revenue agent or revenue officer may assist the special agent whenever any tax or technical accounting problems occur during the interview. The cooperating officer should not question the witness until the officer has discussed the matter with the special agent.

5 *Accountant representative*—The accountant's duty is to assist his/her client in all bookkeeping and accounting matters.

6 *Legal representative*—The attorney has a duty to furnish legal advice to his/her client relating to any matter discussed. This is the attorney's principal function at an interview.

7 *Recorder*—The recorder's function is to prepare a permanent record of the interview. A mechanical recording device may be used in conjunction with the recorder or in lieu of a recorder, where necessary, provided all parties to the proceeding consent thereto.

(6) The aforementioned rights, duties, and privileges are subject to changes by the courts, legislatures, and the policy of the Service. (See 341 through 345.)

346.5 (1-18-80) Record of Interview

9781

346.51 (1-18-80) Introduction

9781

(1) The principal purpose of an interview is to obtain all the facts helpful in resolving the case. Therefore, it is necessary to prepare a permanent record of every interview to be preserved for future use. It is usually prepared on one of the following forms:

Form	Exhibit No.
(a) Affidavit	300-7
(b) Statement	300-8
(c) Question and answer statement	300-9
(d) Memorandum of interview	300-10
(e) Informal notes or diary entries	300-11

346.52 (1-18-80) Affidavit

9781

An affidavit is a written or printed declaration or statement of facts made voluntarily, and confirmed by the oath or affirmation of the party making it, before an officer having authority to administer such oath. No particular form of affidavit is required at common law. It is customary that affidavits have a caption or title, the judicial district in which given, the signature of the affiant, and the jurat, which properly includes authentication. Exhibit 300-7 is a suggested format containing all these characteristics which add to the dignity and usefulness of the affidavit.

346.53 (1-18-80)

9781

Statement

A statement in a general sense is a declaration of matters of fact. Although the term has come to be used for a variety of formal narratives of facts required by law, it is in a limited sense, a formal, exact, detailed presentation of the facts. The statement may be prepared in any form and should be signed and dated by the person preparing it. If possible, the witness should also sign the statement and signify that he/she read and understood it or that it was read to him/her. A statement (Exhibit 300-8) generally contains the comments and remarks of the witness, and is used whenever it is not feasible to place the witness under oath; e.g., a so-called "affidavit," without the affiant's oath is in effect a statement.

346.54 (1-18-80)

9781

Question and Answer Statement**346.541** (1-18-80)

9781

Elements

(1) A question and answer statement is a complete transcript of the questions, answers, and statements made by each participant at an interview. It may be prepared from the recorder's notes or from a mechanical recording device. A mechanical recording device may be used to record statements when no stenographer is readily available for that purpose, with the express advance consent of all parties to the conversation. The source used to prepare the transcript should be preserved and associated with the case file because it may be needed in court to establish what was said. The transcript (suggested format shown in Exhibit 300-9) should be prepared on standard size (8" x 10 1/2") plain bond paper with each question consecutively numbered and should contain the following:

- (a) The time and place where the testimony is obtained.
- (b) Name and address of person giving testimony.
- (c) The matter the testimony relates to.
- (d) Name and title of person asking questions and person giving answers.
- (e) The names and titles of all persons present, including attorney or accountant present to assist the witness. Also the reason for each person being present, if not self-evident.
- (f) Generally, the purpose for the interview should be stated.

(g) Information given to the witness concerning his rights relating to self-incrimination and counsel, if appropriate.

(h) Administration of oath.

(i) Questions and answers establishing that the statement was made freely and voluntarily, without duress, and that no promises or commitments were made by the agents.

(j) Offer to allow witness to make any statement for the record, and, if advisable, an opportunity to examine and to sign the transcript.

(k) Jurat: The officer who administers the oath should complete the jurat. It is preferable, but not essential, to have the same officer who interviewed the taxpayer complete the jurat.

(l) Signatures of any Government witnesses present.

(m) Signature and certificate of person preparing the statement, showing the source of the original information used to prepare it.

(2) A stenographer's original shorthand notes of statement by a principal or a witness in a case will be filed with the considered part of the workpapers relating to the case. The pages containing such notes will be removed from the notebook, numbered, stapled in order, and sealed in an envelope by the stenographer. The following information will be written on the envelope: the case number, the name of the person whose statements are recorded, the date the statements were made, the number of pages of notes, and the name of the stenographer.

(3) Recordings of statements by a principal or a witness made through the use of stenotype machines or sound recording devices will be labeled and filed in a manner similar to that prescribed in (2) above.

(4) A special agent's notes made substantially contemporaneous to interviews of the taxpayer or prospective witnesses and which are used in the preparation of memorandums of interview, affidavits and other similar reports will be preserved and retained in the case file. Notes should contain the date of the interview and the initials of their maker in the upper right corner.

(5) Stenographers' notes and other verbatim recordings of statements made in connection with a collateral investigation will be packaged and identified in accordance with the procedure prescribed in (2) and (3) above and will be sent,

with the collateral report, to the district that requested the investigation.

(6) See also IRM 9715.

346.542 (1-18-80)

9781

Off-Record Discussions

Off-record discussions should not be permitted during a recorded interview of a taxpayer, and kept to a minimum during a recorded interview of a witness.

346.55 (1-18-80)

9781

Memorandum of Interview

(1) A memorandum of interview is an informal note or instrument embodying something that the person desires to fix in memory by the aid of written record. It is a record of what occurred at the interview and usually is in the format shown in Exhibit 300-10. The memorandum shows the date, time, place, and persons present as well as what transpired. It should be promptly signed and dated by the agents present. If the witness is advised of his/her constitutional rights during the interview, this fact should be noted in the memorandum.

(2) Since the person interviewed may be a Government witness in a criminal trial, the special agent should bear in mind that 18 USC 3500 provides for defense inspection of any pre-trial statement about whose subject matter the witness has testified on direct examination. Case interpretation of this subsection covers substantially verbatim recitals of witnesses' oral statements which are contemporaneously recorded. This includes memorandums of interview. [*Anthony M. Palermo v. U.S.*; *U.S. v. Papworth*] Handwritten notes made by an agent during an interview and used as the basis for a more detailed memorandum or report may be subject to inspection by a court and should be preserved and retained in the case file. Trial courts have substantial discretionary authority in interpreting the statute. Special agents, therefore, should confine memorandums to the facts developed in their interviews, and should avoid opinions, conclusions, and other extraneous matters.

(3) Subsection 637.82 contains a discussion of 18 USC 3500 and cases determining when defense inspection of memorandums of interview will be permitted in a criminal trial.

346.56 (1-18-80)

9781

Informal Notes or Diary Entries of Interview

Informal notes should contain sufficient details to permit the agent to refresh his memory as to what transpired at the interview. Any method of recording the entries is sufficient, if it shows the time, place, persons present, and what occurred. Details of interviews should not be entered in the diary, but rather a memorandum should be made and kept in the case file (see Exhibit 300-11). A note should be made in the diary of the time, place, and persons interviewed (see Exhibit 300-11).

346.6 (1-18-80)

9781

Procedure

(1) *Review and corrections*—Every record of an interview should be carefully reviewed for any typographical errors, and for accuracy of context. If the statement is to be examined by the witness, he/she may be permitted to correct typographical errors or to make minor modifications of his/her testimony. The witness should never be permitted to alter the record, or to delete any of his/her testimony. The witness may, however, submit an affidavit or give testimony modifying his/her original statements.

(2) *Execution*—Every document made under oath should have a simple certificate evidencing the fact that it was properly executed before a duly authorized officer. The usual and proper form, referred to as the "jurat," is "Subscribed and sworn to before me at (address)," followed by the date, signature and title of the officer. If the jurat shows an affirmation, the word "affirmed" will be sufficient. The agent administers the oath by having the witness stand, raise his/her right hand, and make a declaration that the document is true and correct.

(3) *Persons entitled to copies*—Upon request, a copy of an affidavit or transcript of a question and answer statement will be furnished a witness promptly, except in circumstances deemed by the Regional Commissioner to necessitate temporarily withholding a copy. (See Policy Statement P-9-31.)

(4) *Subsequent use by special agent*—The record of interview generally is not admissible as evidence at the trial, but may be used to refresh the memory of a witness or to discourage a witness from changing his/her testimony. It may also be used to impeach a witness on the stand when his/her previous statements are inconsistent with his/her testimony, or to furnish a basis for prosecution of a witness who testifies falsely at the trial. If the statement constitutes a confession or an admission against interest, the pertinent parts may be used as such in evidence at the trial. The record also serves as a valuable source of information for subsequent examinations if it contains the personal and financial history of the taxpayer. It may be used to establish a starting point or "cut-off" for a subsequent net worth case, or to provide leads to other violations by the subject or other individuals.

346.7 (1-18-80) 9781
Application

All techniques outlined in 346 are subject to IRM 9384 and any related Manual Supplements.

347 (1-18-80) 9781
Circular Form Letter

347.1 (9-8-80) 9781
General

Mail circularization is a written request to third parties for information where more than ten letters of a similar nature are sent. Mail circularization to obtain third party evidence may be, under certain circumstances, the most practical means of obtaining documentary evidence in an investigation when a large number of persons, widely scattered geographically, need to be reached. If not judiciously used, mail circularization may result in unwarranted embarrassment to the taxpayer or cause unfavorable public reaction, thus subjecting the Service to criticism.

347.2 (9-8-80) 9781
Procedure

To ensure proper use of this technique, mail circularization will not be undertaken in any case without the prior approval of the Chief, Criminal Investigation Division, including approval of the letters to be sent out. Care must be exercised in approving mail circularization to ensure that mail inquiries are sent only to those third parties who, in the view of the Chief, Criminal Investigation Division, are a likely source of information; the information sought is important

to the investigation; and obtaining the information by other means, if at all possible, would not be practical because of either delays in investigation, costs involved, or similar reasons. Caution must be exercised not to damage the reputation of the taxpayer by making the letter either offensive or suggestive of any wrongdoing by the taxpayer. Appropriate wording could be "The Internal Revenue Service is conducting an investigation of . . .". When mailing circularizations, all such letters will be signed by the special agent with prior approval of the Chief, Criminal Investigation Division, indicated on the file copy. The title "Special Agent" and Criminal Investigation Division will be included in the signature block.

348 (1-18-80) 9781
Disclosure

348.1 (1-18-80) 9781
General

All returns and return information are confidential and may not be disclosed except as authorized by the Internal Revenue Code. This rule applies to all present and former IRS employees. Civil and criminal sanctions may be imposed upon intentional violators.

348.2 (1-18-80) 9781
Definitions

(1) A "return" is any tax return or information return, schedules, and attachments thereto, including any amendment or supplement, which is required or permitted to be filed and is in fact filed by a taxpayer with the Secretary of the Treasury. Examples include:

(a) Forms 1040, Schedules A, B, C and Forms W-2.

(b) A taxpayer has filed an income tax return and subsequently submits a letter to IRS explaining an item on the original return. The letter is within the definition of return.

(2) The statutory definition of "return information" is very broad. It includes any information other than a taxpayer's return itself which IRS has obtained from any source or developed through any means which relates to the potential liability of any person under the Code for any tax, penalty, interest, fine, forfeiture or other imposition or offense. It includes information extracted from a return, e.g., the names of dependents, locations of business interests, bank accounts, etc. Examples include:

(a) The fact that a person has filed a return or is under investigation is recorded in IRS files.

(b) The fact that the Service has copies of public records maintained in its files which were secured from a county clerk's office pursuant to an investigation of a taxpayer.

(3) "Taxpayer return information" is return information which is filed with or furnished to the IRS by or on behalf of the taxpayer to whom the return information relates. This includes, for example, data supplied by a taxpayer's representative (e.g., his accountant) to the IRS in connection with an audit of his return.

(4) Disclosure is the making known of returns or return information in any manner. A disclosure may be either direct or indirect. Discussing specific facts of a case you are working on with your supervisor is a disclosure although clearly a proper one.

(5) Tax Administration includes the enforcement of not only the Internal Revenue Laws, but also the enforcement of other related Federal Statutes where such enforcement is done in connection with the administration of tax laws.

348.3 (1-18-80) 9781 **Disclosures for Investigative Purposes**

Special agents are specifically authorized by IRC 6103(k)(6) to disclose return information to the extent necessary to gather data which may be relevant to a tax investigation. Situations in which special agents may have to make such disclosures in order to perform their duties arise on a daily basis. For example, this occurs whenever they contact third parties believed to have information pertinent to a tax investigation. IRC 6103(k)(6) permits the disclosure of return information in the investigation process but does not authorize the disclosure of returns themselves. They may be disclosed during the investigation process only to their preparer. When soliciting information from a third party other than a return preparer during a tax investigation, a special agent may not show a taxpayer's tax return to the third party. However, pertinent data (e.g., the nature and amount of income, deductions, expenses, etc.) may be extracted from the tax return and used in questions to third parties.

348.4 (1-18-80) 9781 **Disclosures to Other Treasury Employees**

(1) On many occasions, IRS employees have an official need for certain returns or re-

turn information in the special agent's case file. Such employees include the special agent's group manager, another special agent, a revenue agent, a revenue officer, etc. The term "official need" is the key to whether disclosure to another IRS employee is proper.

(2) A written request will generally be required before tax information in the possession of the IRS will be disclosed to an employee of another component of the Department of the Treasury whose official duties require the information for tax administration purposes.

348.5 (1-18-80) 9781 **Disclosures to The Department of Justice for Tax Administration Purposes**

Approved special agent reports are referred to the Department of Justice under the authority of IRC 6103(h)(2) and (3). A disclosure may be made to the Department of Justice of relevant returns or return information pertaining to the taxpayer who is or may be a party to a tax administration proceeding or investigation. Returns and return information of third parties gathered in connection with an investigation of a taxpayer may be disclosed to the Department of Justice if such information satisfies the item or transactional relationship test provided in IRC 6103(h)(2). The item test is met if an item on a third party's return may relate to the resolution of an issue in the tax administration proceeding or investigation. The transaction test is met if the third-party's returns or return information may relate to a transaction between the taxpayer and the third party and the third-party information pertaining to the transaction may affect the resolution of an issue in a proceeding or investigation involving tax administration. Agents contacted by a Justice attorney and asked to provide returns or return information in connection with an investigation or prosecution which was not referred by IRS should tell the requesting attorney that the agent will have to seek disclosure advice.

348.6 (1-18-80) 9781 **Disclosures to a Taxpayer's Representative**

(1) Disclosure of returns and return information to the taxpayer's representative will be made only in the following circumstances:

(a) The taxpayer is present at the time of the disclosure; or

(b) If the taxpayer is not present, then a disclosure will be made to the representative only: if the taxpayer has executed a written consent to the disclosure (Form 2848-D, Declaration and Authorization, may be used for this purpose); or if the taxpayer has provided his/her representative with a power of attorney (Form 2848, Power of Attorney, may be used for this purpose).

348.7 (1-18-80)

9781

**Disclosure of Tax Information for
Nontax Criminal Administration
Purposes (Federal Only)**

Often in the conduct of tax investigations, special agents discover evidence of Federal crimes outside the jurisdiction of IRS. If this information is nontax information, see text 348.8. IRC 6103(i) requires IRS in the instance of tax information to make a distinction between taxpayer return information and return information for disclosure purposes. IRC 6103(i) permits disclosure of return information other than taxpayer return information upon the written request of the head of a Federal agency or upon the initiative of the Service. However, IRC 6103(i) permits disclosure of taxpayer return information only upon the issuance of a court order. In both of these instances, the information will be reported by the special agent to the Chief, Criminal Investigation Division. See text 339.2

348.8 (1-18-80)

9781

**Disclosure of Nontax Criminal
Violations**

Any Service employee who either witnesses the commission of any nontax criminal act or receives information orally or in writing indicating facts that relate to a nontax violation of Federal, state, or local criminal laws which facts are not directly or indirectly related to a tax return, may disclose this information to appropriate law enforcement officials under the procedures found in Chapter 35(00) of "new" IRM 1272, Disclosure of Information Handbook.

348.9 (5-9-80)

9781

**Disclosure of Special Agents'
Reports and Information
Contained in Taxpayer Delinquent
Account Files to Probation
Officers**

(1) U.S. Probation Officers are appointed by and serve under the direction of the United States District Court. 18 U.S.C. §3654, Rule 32(c) of the Federal Rules of Criminal Procedure contemplates that the probation service of the court will make a presentence investigation and report to the court before imposition of sentence, unless the defendant waives, with the permission of the court, a presentence investigation and report, or the court determines

that the record contains sufficient information to enable the court to exercise meaningful sentencing discretion. The rule specifically provides that the "report of the presentence investigation shall contain any prior criminal record of the defendant and such information about his/her characteristics, his/her financial condition and the circumstances surrounding his/her behavior as may be helpful in imposing sentence or in granting probation or in the correctional treatment of the defendant, and such other information as may be required by the court." Probation officers are not permitted to submit the presentence report to the court or disclose its contents to anyone, unless the defendant has pleaded guilty or nolo contendere or has been found guilty. The judge may inspect the presentence report at any time, however, with the written consent of the defendant.

(2) It is the view of the Chief Counsel that the special agents' report may be disclosed to a probation officer in cases where a taxpayer has pleaded guilty or nolo contendere or has been found guilty of Federal tax law violations, for the purpose of preparing the report contemplated by Rule 32(c) of the Federal Rules of Criminal Procedure. The disclosure of special agents' reports to probation officers is authorized by IRC §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. Inspection of the special agents' report by the probation officer, to the extent material and relevant, should be made at a convenient location, such as the U.S. Attorney's office. Proper care should be exercised to provide adequate security of the report and the information contained therein, to prevent unauthorized disclosure.

(3) Occasionally U.S. Probation Officers will request tax information from the Service as part of a presentence investigation in a non-tax criminal case. Disclosures may be made to probation officers in these circumstances only as provided in IRC §6103(c). Temp. Reg. 404.6103(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.

(4) Following conviction for criminal tax violations, courts in some instances specify that probation of the sentence imposed is conditioned upon satisfactory settlement and/or payment of civil liability for taxes and penalties. The Director, Criminal Investigation Division, will take whatever steps are necessary to initiate appropriate legal action in any case where the taxpayer has failed to comply with the conditions of the probation. See IRM 9537.2. IRC §6103(h)(4) permits the disclosure of information contained in Taxpayer Delinquent Account files to U.S. Probation Officer in a judicial pro-

ceeding pertaining to tax administration for the purpose of informing the court of any non-compliance with the terms of the taxpayer's probation. See 9537.2 for the rules governing disclosure to probation officers in these circumstances.

350 (1-18-80) 9781 **Documentary Evidence**

351 (1-18-80) 9781 **Definition of Documentary Evidence**

Documentary evidence is evidence consisting of writings and documents as distinguished from parol, that is, oral evidence.

352 (1-18-80) 9781 **Best Evidence Rule**

352.1 (1-18-80) 9781 **Definition of Best Evidence Rule**

(1) The best evidence rule, which applies only to documentary evidence, is that the best proof of the contents of a document is the document itself.

(2) The best evidence rule, requiring production of the original document, is confined to cases where it is sought to prove the contents of the document. Production consists of either making the writing available to the judge and counsel for the adversary, or having it read aloud in open court. Facts about a document other than its contents are provable without its production. [4 Wigmore (3d Ed.) 1248] For example, the fact that a sales contract was made is a fact separate from the actual terms of the contract and may be proved by testimony alone.

(3) Certain documents, such as leases, contracts or even letters, which are executed (signed) in more than one copy are all considered originals and any one of the copies may be produced as an original.

352.2 (1-18-80) 9781 **Application of Best Evidence Rule**

(1) When an original document is not produced, secondary evidence, which could consist of testimony of witnesses or a copy of the writing, will be received to prove its contents if its absence is satisfactorily explained. Unavailability of the original document is a question to

be decided by the trial judge, just as he/she decides all questions regarding admissibility of evidence.

(2) The reason for the rule is to prevent fraud, mistake, or error. For example, the testimony of a special agent as to the contents of a sales invoice itself is unavailable. However, in that event, the special agent's testimony is admissible even though the person who prepared the invoice is available to testify. The best evidence rule will not be invoked to exclude oral testimony of one witness merely because another witness could give more conclusive testimony.

352.3 (1-18-80) 9781 **Secondary Evidence**

(1) All evidence falling short of the standard for best evidence is classed as secondary evidence and is a substitute for better evidence. Stated in another way, when it is shown from the face of the evidence itself or by other proof that better evidence was or is available, the evidence is classified as secondary evidence.

(2) Secondary evidence may be either the testimony of witnesses or a copy of the writing. There is no settled Federal rule stating which of these is a higher degree of secondary evidence.

(3) Before secondary evidence of any nature may be admitted, there must be satisfactory evidence of the present or former existence of an original document, [*Fidelity Trust Co. v. Mayhugh*; *Canister Co. v. U.S.*] properly executed and genuine. [*O'Donnell v. U.S.*] It must be established that the original has been destroyed, lost, stolen, or is otherwise unavailable. In all cases, except destruction provable by an eyewitness, the party proving the document must have used all reasonable means to obtain the original, i.e., he/she must have made such diligent search as was reasonable under the facts. [*Klein v. U.S.*] Some cases have specifically set the rule that search must be made in the place where the document was last known to be, or that inquiry must be made of the person who last had custody of it. In every case, the sufficiency of the search is a matter to be determined by the court. [*Sellmayer Packing Co. v. Commissioner of Int. Rev.*; *Fogel v. U.S.*; *O'Donnell v. U.S.*] If a document is offered as secondary evidence it must be shown to be a correct copy of the original.

(4) When the original document has been destroyed by the party attempting to prove its contents, secondary evidence of the contents will be admitted, if the destruction was in the ordinary course of business, or by mistake, or even intentionally, provided it was not done for any fraudulent purpose. [*Riggs v. Tayloe*, 9 Wheaton; *McDonald v. U.S.*; *Granquist v. Harvey*] In the Granquist case the defendant's income tax returns had been destroyed pursuant to Executive Order and statutory authority. At the trial, secondary evidence in the form of oral testimony and state returns was admitted to establish the contents of the missing income tax returns.

(5) In a civil case, secondary evidence of the contents of a document may be introduced if the original is in the possession of the opponent in the case, provided the party attempting to introduce the copy has first served a notice upon his/her opponent to produce the original, and the opponent has failed to do so. In a criminal case not involving corporate records, the Government may introduce secondary evidence of the defendant's records without showing prior notice to produce. [*Lisansky v. U.S.*; *U.S. v. Reyburn*; *McKnight v. U.S.*]

(6) The Lisansky case presents a full statement of this rule and illustrates its application. The defendants in the case, on trial for income tax evasion, argued that the court, in allowing Government agents to testify about the contents of the defendant's books and records and permitting photostatic pages of the books to be introduced in evidence, violated the best evidence rule. The Court of Appeals held:

"So far as the best evidence rule is concerned, the government complied with this rule, in that it produced the best

proof which could be produced under the circumstances of the case. The books were shown to be in possession of the defendants; and, because of the provisions of the Fourth and Fifth Amendments, the court was without power to require their production at the trial. (*Boyd v. U.S.* cited). *** But evidence as to the contents of books and papers is not lost to the government because the defendant has them in his possession and their production cannot be ordered on the usual basis laid for the introduction of secondary evidence. In such cases, the rule is that, when they are traced to his possession, the government, without more ado, may offer secondary evidence of their contents."

353 (1-18-80) 9781 **Admissibility of Specific Forms of Documentary Evidence**

353.1 (1-18-80) 9781 **Statutory Provisions**

Admissibility in the Federal courts of various forms of documentary evidence is covered principally in sections 1731 through 1745 of Title 28, United States Code.

353.2 (1-18-80) 9781 **Business Records**

353.21 (1-18-80) 9781 **Federal Shop Book Rule**

(1) Records made in the regular course of business may be admissible under 28 USC 1732(a) which states:

"In any court of the United States and in any court established by Act of Congress, any writing or record, whether in the form of an entry in a book or otherwise, made as a memorandum or record of any act, transaction, occurrence, or event, shall be admissible as evidence of such act, transaction, occurrence, or event, if made in regular course of any business, and if it was the regular course of such business to make such memorandum or record at the time of such act, transaction, occurrence, or event or within a reasonable time thereafter.

"All other circumstances of the making of such writing or record, including lack of personal knowledge by the entrant or maker, may be shown to affect its weight, but such circumstances shall not affect its admissibility.

"The term 'business,' as used in this section, includes business, profession, occupation, and calling of every kind."

(2) The above statute permits showing that an entry was made in a book maintained in the regular course of business without producing the particular person who made the entry and having him/her identify it. [*Hoffman v. Palmer*] For example, in proving a sale, an employee of the customer may appear with the original purchase journal and cash disbursements book of the customer, to testify that these were books of original entry showing purchases by the customer and payments by him/her to a taxpayer for these purchases, even though the witness is not the person who made the entries.

(3) The essence of the "regular course of business" rule is the reliance on records made under circumstances showing no reason or motive to misrepresent the facts. As stated in *Clainos v. U.S.* "The rule contemplates that certain events are regularly recorded as 'routine reflections of the day to day operations of a business' so that 'the character of the records and their earmarks of reliability' import trustworthiness." For example, the rule is applied to bank records under the theory that the accuracy of the records is essential to the very life of the bank's business. [*U.S. v. Cotter*; *U.S. Manton*]

(4) The mere fact that a record has been kept in the regular course of business is not of itself enough to make it admissible. The rules of competency and relevancy must still be applied, the same as for any other evidence. [*Schmeller v. U.S.*] If a ledger is offered in evidence to prove entries posted from a journal which is available, the journal itself, as the book of original entry, should be produced.

(5) When in the regular course of business it is the practice to photograph, photostat, or microfilm the business records mentioned above, such reproductions when satisfactorily identified are made as admissible as the originals by statute. [28 USC 1732(b)] Similarly, enlargements of the original reproductions are admissible if the original reproduction is in existence and available for inspection under the direction of the court. This rule is particularly helpful in connection with bank records because of the common practice of microfilming ledger sheets, deposit tickets, and checks.

353.22 (12-30-80) Photographs, Photostats, and Microfilmed Copies

9781

(1) Photographs, photostats, and microfilmed copies of writings not made in the regular course of business are considered secondary

evidence of the contents, inadmissible if the original can be produced and no reason is given for failure to produce it. The same rule is usually applied where the original is already in evidence and no reason has been given for offering the copy. The practice has sometimes been followed in income tax cases, of placing the original return in evidence and then substituting a photostat with permission of the court where there has been no defense objection. IRC 7513 as amended provides for reproduction of returns and other documents, and covers use of the reproductions as follows:

"In General.—The Secretary or his delegate is authorized to have any Federal agency or person process films or other photo-impressions of any return, document, or other matter, and make reproductions from films or photo-impressions of any return document, or other matter."

"Use of Reproductions—Any reproduction of any return, document, or other matter made in accordance with this section shall have the same legal status as the original; and any such reproduction shall, if properly authenticated, be admissible in evidence in any judicial or administrative proceeding, as if it were the original, whether or not the original is in existence."

(2) A photographic or photostatic reproduction of a document may be admitted after evidence has been produced that the original cannot be obtained and that the reproduction is an exact and accurate copy. This principle has been followed where the original was in the hands of the defendant and its production could not be compelled by the Government. [*Zap v. U.S.*; *Lisanky v. U.S.*] It has further been held that a photograph of a promissory note taken because the writing was becoming faded and illegible was admissible in place of the illegible original. [*Duffin v. People*]

(3) When photostats of documents are obtained during an investigation they shall be initialed on the back, after comparison with the original, by the one who made the photostat or by the agent who obtained the document which was photostated. The date of such comparison shall be noted following the initial. The source of the original document shall be set out on the reverse of the photostat or on an initialed attachment or memorandum relating to each photostat or group of photostats covered by the one memorandum. This procedure will ensure proper authentication at a trial. A MULTI-STAMP Stencil Duplicator or other similar device may be used, on an optional basis, for placing such identifying data with the exception of the agent's initials. The special agent will personally affix his/her initials on such reproductions.

353.23 (1-18-80)
Transcripts

9781

Transcripts are copies of writings and are admissible under the same principles governing the admission of photographs or photostatic reproductions (text 353.22). A special agent shall take certain precautions in the preparation of transcripts to ensure proper authentication for their admission at a trial when the original documents are unavailable. The agent shall carefully compare the transcript with the original and certify that it is a correct transcript. The certification shall show the date that the transcript was made, by whom and where it was made, and the source from which it was taken. Each page shall be identified by the special agent to show that it forms part of the whole. A good practice is to show the total number of pages involved, as, page 1 of 5 pages. When a partial transcript is made it should be so indicated, for example, "excerpt from page 5 of the cash receipts book." In the *Zacher v. U.S.* a Government agent was allowed to identify a transcript of the taxpayer's bank records, which the agent testified had been prepared by fellow agents under his/her direction, control, and supervision.

353.24 (1-18-80)
Charts, Summaries and Schedules

9781

(1) Charts and summaries prepared by examining agents may be placed in evidence at the discretion of the court if they are summaries of evidence previously admitted in a case. [*Conford v. U.S.*; *U.S. v. Doyle*] This is permitted as a matter of convenience to the court and jury. [*Schneck v. U.S.*; *U.S. v. Dave Beck*] At times such charts and summaries have been permitted in the jury room to aid in the jury's deliberations. [*Beaty v. U.S.*; *Steele v. U.S.*] Charts are particularly effective in net worth cases to summarize the details of the various items and computations upon which the additional income is based. [*Holland v. U.S.*] Summaries are frequently used to simplify the presentation of a great number of transactions upon which a specific item case is based. For example, in *Eggleton v. U.S.*, involving the purchase and resale of 202 used automobiles, a schedule of those items showing the details of the transactions was admitted into evidence after the introduction of the pertinent records and testimony.

353.23

MT 9781-14

However, care should be exercised in the preparation of charts and summaries to avoid prejudicial headings or titles. For example, a chart listing a series of unreported sales should not be entitled "Fraudulently Omitted Sales".

(2) A schedule prepared by the investigating agent from the taxpayer's books and records is admissible as secondary evidence of their contents. It should be properly certified and authenticated in a similar manner to that used for transcripts (text 353.23).

353.25 (1-18-80)
Notes, Diaries, Workpapers, and Memorandums

9781

Notes, diaries, workpapers, and memorandums made by examining agents during an investigation ordinarily are not considered evidence. [See text 323.7:(1).] However, they may be used on the witness stand or prior to testifying as an aid to recollection or may be introduced into evidence by the adverse party if they constitute impeaching evidence. Any documents used by a witness while on the stand are subject to inspection by the defense. They should always be carefully prepared to ensure that the whole truth is reflected because of their possible use in court. A further discussion of this subject is contained in Subsection 637.6-637.63.

353.26 (1-18-80)
Proving Specific Transactions

9781

(1) In proving specific transactions such as purchases and sales of real and personal property loans, encumbrances, and other commercial events, it is not enough for the special agent to obtain the written record of those transactions. Documents and recorded entries, no matter how honestly made, are not in themselves facts. They are written descriptions of events but are not in themselves proof of the events. Consequently, witnesses should be produced who will testify about the transactions and authenticate the documents. During the investigation, parties to the transactions should be questioned to determine whether the documents or entries truthfully relate all the facts, and that there are no additional facts or circumstances which have not been recorded. The following examples illustrate this principle:

(a) In the case of alleged unreported sales, the vendees should be interviewed to determine whether checks and invoices represent all the transactions with the taxpayer, whether the documents truthfully record the events, whether additional sums might have been paid or refunded, whether there were any other methods of payment or other parties to the transaction, and whether there is other relevant information.

(b) A contract of sale, settlement sheet, closing statement or recorded deed does not necessarily reflect all the facts involved in a real estate transaction. Currency payments over and above those shown in the instrument and nominees or other "straw parties" may be revealed through questioning the parties to the transaction. Mortgages and other encumbrances may not actually exist although recorded documents seem to evidence such facts. Proof of real estate transactions should therefore include the testimony of the parties involved.

(2) No question of admissibility is involved when different items of documentary evidence may be used to prove a fact. The only thing involved in such case is the weight of the evidence, which is determined by the jury in the same way as the weight of any other evidence placed before it. Thus, where the Government is trying to prove that a third party made purchases from the taxpayer, a canceled check of the third party to the order of the taxpayer will not be excluded from evidence merely because purchase invoices, purchase journals, or cash disbursements books of the party, although available, have not been produced. The fact that the check itself may not be the best proof of payment for a purchase is a factual question for the jury. However, complete documentation of every transaction should be obtained whenever possible.

353.3 (1-18-80) **Official Records**

9781

353.31 (1-18-80) **Statutory Provisions Regarding Official Records**

9781

The admissibility of official records and copies or transcripts thereof in Federal proceedings is covered by provisions of the United States Code and by rules of criminal and civil procedure.

353.32 (1-18-80)

9781

Authentication of Official Records

(1) The admissibility of official records and copies or transcripts thereof is provided for by the United States Code (28 USC 1733), as follows:

"(a) Books or records of account or minutes of proceedings of any department or agency of the United States shall be admissible to prove the act, transaction or occurrence as a memorandum of which the same were made or kept.

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

(2) The method of authentication of copies of Federal records is set forth in the Federal Rules of Civil Procedure [28 USC Rule 44] which is made applicable to criminal cases by Rule 27 of the Federal Rules of Criminal Procedure. Authentication of a copy of a Government record under these rules would consist of a certification by the officer having custody of the records and verification of the official status of the certifying officer by a Federal district judge over the seal of the court. Verification of the official status of District Directors is not required on authenticated copies of Internal Revenue Service documents certified to by District Directors over their seal of office. [26 USC 7514]

(3) Tax returns which have been filed, or certified copies of them, are admissible under Title 28, section 1733 as official records of the Internal Revenue Service. [26 USC 6103]. Procedures and types of forms for the certification of tax returns or other official records by District Directors are set forth in Chapter 800 of new IRM 1272, Disclosure of Official Information Handbook. Although tax returns or other official records are usually offered in evidence through a Service representative, authenticated copies are generally admissible without a representative.

(4) A Certificate of Assessments and Payments (Form 4340, for non-ADP returns) or a Computer Transcript (Form 4303, for ADP returns) is customarily offered in evidence through a representative of the Internal Revenue Service as a transcript of the records to which it relates. [Vloutis v. U.S.] These forms, properly authenticated in accordance with [28 USC Rule 44] are admissible without the presence of an Internal Revenue Service representative.

353.33 (1-18-80)

9781

Proof of Lack of Record

(1) It is sometimes desirable or necessary to prove that a search of official files has resulted in a finding that there is no record of a certain document. For example, in a prosecution for failure to file an income tax return, the Government, in addition to such oral testimony as it may introduce, may desire some documentary certification that a search had disclosed no record of such return. Rule 44(b) of the Federal Rules of Civil Procedure makes the following provision for this:

"Proof of Lack of Record. A written statement signed by an officer having the custody of an official record or by his deputy that after diligent search no record or entry of a specified tenor is found to exist in the records of his office, accompanied by a certificate as above provided, is admissible as evidence that the records of his office contain no such record or entry."

(2) Procedures and a standard form for the certification of a lack of records by District and Service Center Directors are set forth in Section 850, IRM 1272.

353.34 (1-18-80)

9781

State and Territorial Statutes and Procedures

(1) The admissibility of copies of legislative acts of any State, Territory, or Possession of the United States and of court records and judicial proceedings, is provided for in the United States Code [28 USC 1738] as follows:

"Such Acts, records and judicial proceedings or copies thereof, so authenticated, shall have the same full faith and credit in every court within the United States and its Territories and Possessions as they have by law or usage in the courts of such State, Territory or Possession from which they are taken."

(2) The procedures for authentication of the above records are recited in the same section of the Code.

(3) Nonjudicial records or books kept in any public office of any State, Territory, or Possession of the United States, or copies thereof, are made admissible by the United States Code [28 USC 1739] and given full faith and credit upon proper authentication.

354 (9-8-80)

9781

Receipt for Records and Documents

(1) It is sometimes desirable or necessary to examine a taxpayer's or witness' books, records, canceled checks, and other documents at the Internal Revenue office. The determining factors are the cooperation of the person submitting the records, the volume of documents,

the need for photostats or transcripts, and other considerations depending on the individual case.

(2) A receipt must be issued in all instances where a special agent removes records or documents from the premises of a principal or witness by either legal process or agreement. (See IRM 9383.3:(7).) Form 2725 is a document receipt used for this purpose. A specimen document receipt and the general instructions for its preparation are contained in Exhibit 300-12. The hypothetical facts in Exhibit 300-12 coincide with those appearing in a summons illustration (Exhibit 300-14).

(3) The document receipt form assembly consists of two parts. The original, Form 2725, is issued to the person submitting the records, and the copy is retained in the special agent's case file. The substitution of a makeshift receipt may convey an impression of carelessness on the part of the issuing officer. Particularly in dealing with principals, an incomplete or improperly prepared receipt may lead to allegations that records were lost, mishandled, or obtained under improper circumstances. The consistent use and careful preparation of Form 2725 should reduce any possible areas of criticism arising from inadequate receipts. It should also help the issuing officer identify and authenticate records or documents during an investigation and any subsequent court proceedings.

(4) The reverse of the document receipt copy contains a history and custody of documents section. The completion of this section is not required for all documents received by special agents. It need only be prepared when a receipt is issued for records or other documents of a possible defendant.

(5) Many cases call for the circularization of a taxpayer's customers or suppliers by mail. The written requests generally involve a few, easily identified records or documents. Unless required by local instructions or individual circumstances, a receipt need not be issued to a witness who transmits the records or documents through the mail. Since an adequate record of the request for and return of the documents should appear in the correspondence file for each case, it would be impracticable and a duplication of effort to issue a receipt for every document received under circularization procedures. Although a receipt may not be necessary under these circumstances, proper identification and authentication of any photostats or transcripts should not be overlooked by the special agent.

355 (1-18-80) 9781
"Chain of Custody"**355.1** (1-18-80) 9781
Legal Requirements for "Chain of Custody"

"Chain of custody" is an expression usually applied to the preservation by its successive custodians of the instrument of a crime or any relevant writing in its original condition. Documents or other physical objects may be the instrumentalities used to commit a crime and are generally admissible as such. However, the trial judge must be satisfied that the writing or other physical object is in the same condition as it was when the crime was committed. Consequently, the witness through whom the instrument is sought to be introduced must be able to identify it as being in the same condition as when it was recovered. Special agents must therefore promptly identify and preserve in original condition all evidentiary matter that may be offered into evidence. This would particularly apply to records, documents and other paraphernalia seized in a raid.

355.2 (1-18-80) 9781
Identification of Seized Documentary Evidence

(1) In order that a seized document may be admissible as evidence, it is necessary to prove that it is the document that was seized and that it is in same condition as it was when seized. Since several persons may handle it in the interval between the seizure and the trial of the case, it should be adequately marked at the time of seizure for later identification, and its custody must be shown from that time until it is introduced in court.

(2) A special agent who seizes documents should at once identify them by some marking so that he/she can later testify that they are the documents seized, and that they are in the same condition as they were when seized. He/she may, for instance, put his/her initials and the date of seizure on the margin, in a corner or some other inconspicuous place on the front, or on the back of each document. If circumstances indicate that such marking may render the document subject to attack on the ground that it has been defaced or it is not in the same condition as when seized, the special agent may, after making a photostat or other copy for comparison or for use as an exhibit to his/her report, put the document into an envelope and write a description and any other identifying information on the face of the envelope.

356 (1-18-80) 9781
Questioned Documents**356.1** (1-21-81) 9781
Use and Application of Questioned Documents

(1) Modern crime detection techniques require an extensive use of scientific aids in order to obtain and establish proof of facts not otherwise obtainable. The identification of handwriting and typewriting is frequently of great importance in the investigation of cases. This is especially true when the case involves an anonymous letter, or when a successful solution depends upon determining whether a typewritten document was or was not prepared in a particular office and on a certain machine. Both handwriting and typewriting reflect individual characteristics under the precision instruments of the experts and are susceptible of definite identification and proof.

(2) Questioned document analysis is performed by the Midwest Region Document Laboratory. In addition, the facilities of the National Bureau of Standards and other Government laboratories, whose personnel include outstanding scientists in various fields of investigation are available.

(3) Documents should be forwarded by registered mail to the ARC (Criminal Investigation), Internal Revenue Service, 10th Floor, One N. Wacker Drive, Chicago, Illinois 60606, Attn: QD Laboratory. The requester, before forwarding documents, may wish to contact the document examiners by phone (FTS 886-5713) to determine what is necessary to ensure a complete and satisfactory examination. The accompanying memorandum should describe the documents to be examined, the type of examination required (e.g., handwriting analysis, alterations, ink dating, etc.), and the required completion date. If the Midwest Region Document Laboratory cannot process a request, they will arrange to have the work performed elsewhere.

(4) In some urgent situations an expeditious analysis may be necessary. In these instances, the Chief, CID will call the Special Enforcement Assistant, Midwest Region (who is the immediate supervisor of the Document Laboratory) to ascertain whether technical capabilities or workload will accommodate the urgency of the request. If the Midwest Region Document Laboratory is unable to perform the function for either reason, the Special Enforcement Assistant will grant permission and make arrangements for the analysis to be performed elsewhere. The Chief, CID will confirm approved telephonic request in writing by memorandum to the ARC (Criminal Investigation) Midwest Region.

356.2 (1-18-80)

9781

Definition of Questioned Document

A questioned document is one that has been questioned in whole or part with respect to its authenticity, identity, or origin. It may involve handwriting or typewriting comparison, determination of the age of documents and inks, and examination of erasures, obliterations, and overwriting.

356.3 (1-18-80)

9781

Standards for Comparison With Questioned Documents

(1) In addition to the questioned document, and in order that its authenticity, identity, origin, or relationship to some matter at issue may be determined, the special agent should secure and submit as many known samples, called exemplars, of the handwriting of the suspected person or the typewriting of the suspected machines, as may be needed for comparison purposes. These are referred to as standards for comparison.

(2) The Federal statutes [28 USC 1731] provide for comparison of handwriting standards, as follows:

"The admitted or proved handwriting of any person shall be admissible, for purposes of comparison, to determine genuineness of other handwriting attributed to such person."

(3) Admissibility of handwriting specimens is determined in the first instance by the trial court, [U.S. v. Angelo] although the ultimate comparison is made by the jury. Little or no limitation has been placed by courts upon the nature of documents which may be admitted for this purpose. For instance, the signature of a defendant on a stipulation waiving jury trial was admitted for comparison of the signature with that which appeared on a document offered in evidence, in order to authenticate the document. [Desimone v. U.S.] In another case, [Hardy v. U.S.] where a defendant was on trial for theft of money and traveler's checks from a bank, the Government was permitted (after concealment of prejudicial portions) to introduce for comparison with his/her alleged endorsements of the traveler's checks, an instrument executed by him/her while an inmate at a Federal penitentiary.

(4) Generally, persons who have seen the defendant write, one or more times, or who are familiar with his/her handwriting from carrying on correspondence with him/her or from handling writings known to have been written by him/her, are competent as nonexperts to give opinions about the genuineness of a writing purported to be that of the defendant. [Murray v. U.S.; Rinker v. U.S.; Rogers v. Ritter]

(5) However, in a case where the Government attempted to introduce a bank signature card as a comparison specimen, the court held

it to be a properly admissible basis for comparison, even though the witness who identified it was a bank clerk who had not seen the defendant sign the card nor even seen him/her write his name, but testified that the bank referred to the signature card when presented with checks drawn in the defendant's name. [Woitte v. U.S.]

(6) Although the statute does not cover comparison of typewriting standards, it would follow logically that any rule respecting handwriting standards would cover typewriting standards as well, and that known specimens would be admissible for such purpose.

356.4 (1-21-81)

9781

Handwriting Exemplars

(1) Whenever an agent becomes aware that the authenticity or origin of a document may be questioned, he/she should attempt to obtain handwriting exemplars of the parties involved.

(2) The summoning of a taxpayer or other witness for the purpose of taking handwriting exemplars is within the authority of IRC 7602 [U.S. v. Euge]. This does not violate any Constitutional rights or policies enunciated by Congress. Compulsion of handwriting exemplars is neither a search or seizure subject to Fourth Amendment protections nor testimonial evidence protected by the Fifth Amendment privilege against self-incrimination. A handwriting exemplar is an identifying physical characteristic.

(3) To provide consistency among special agents in the taking of handwriting or handprinting exemplars, Form 6540, Handwriting or Handprinting Exemplars was developed. It's use is recommended when an agent believes a case will be presented to the Document Laboratory for examination. Ordinarily, all segments of Form 6540 should be utilized. Instructions are provided with the Form.

(4) Following is some general information regarding handwriting exemplars:

(a) The more numerous and lengthy the specimens, the better will be the opportunity for accurate comparison, and the less likely the possibility that the subject will succeed in disguising his/her writing if inclined to do so. It may therefore be advisable to obtain several specimens over a period of days and to have them include some of the more common words and expressions used in the questioned writing.

(b) For the best effect, the exemplars should duplicate the questioned document. It should be made with a similar writing instrument, on similar paper, and should include, as nearly as possible, the full content or text of the questioned writing.

(c) The agent should be alert to the possibility of disguises in handwriting. The most used forms of disguise are: writing unusually large or small; writing extremely fast or with painstaking slowness; backhand or other extreme changes in slant; or complicated embellishments or greatly simplified forms in a disconnected printing style. Requesting the subject to write at normal speed from dictation may be effective for elimination of disguise. If the questioned writing itself is disguised in whole or in part, specimens in a disguised hand may be useful.

(d) Since it may become necessary to establish proof as to whose handwriting, printing, or numerals appear on the books and records, the agent should try to obtain from the appropriate persons samples of writing, printing and numerals which would provide an adequate basis for comparison.

356.5 (1-18-80)

9781

Typewriting Exemplars

(1) With respect to typewriting, it is advisable to furnish sets of impressions of all the characters on the keyboard, typed with light, medium, and heavy touch, and at varying rates of speed, to bring out the technical irregularities. The various manufacturers of typewriters have aimed at a certain individuality in their machines and from time to time have made changes in the design, size and proportions of the type and spacing. These serve not only to identify the make of machine used, but to determine that its serial number falls within a certain series. In the ordinary course of use, each machine undergoes deterioration. The type bars lose their vertical and horizontal relationship to each other. Defects and imperfections appear in the type faces of the result of collisions and wear. The spacing mechanism may develop irregularities. These factors impart to each typewriter an individuality which serves to distinguish it from all others and makes positive identification possible.

(2) Exemplars should be made with the ribbon found on the machine and should repeat the complete text of the questioned matter. If the text is extensive, enough of it should be repeated to give all the important letters, figures, and the ribbon adjustment set on stencil, in order to get impressions of type with smallest possible masking. The presence of type scar observed in ribbon specimens should be confirmed by carbon specimens.

356.6 (1-18-80)

9781

Other Exemplars

In proving erasures, alterations, overwritings, blotter impressions, or determining the age of a questioned writing or document, exemplars ordinarily are not involved. Through the use of infrared light technique, microscopes, ultraviolet light, and chemicals the laboratory can resolve many questions about a document. However, exemplars have on occasion been used to

aid in the determination of the age of documents. Standards for comparison consisted of documents allegedly existing at the time of the questioned document. Comparison of inks, water marks, condition of paper, and other characteristics provides clues to the age of the questioned document. Although pencil notations cannot ordinarily be examined for age, the condition of the material upon which the notations were made might be indicative of the time of writing.

356.7 (1-18-80)

9781

Identifying Exemplars and Questioned Documents

(1) Having obtained the necessary numbers and kinds of exemplars, the special agent should initial and date them on the back so that he/she can identify them for use at a trial. He/she must secure the questioned document, care for it properly, transmit it along with the exemplars to the expert, and maintain the chain of custody until it is produced in court.

(2) Questioned document examiners make examinations and analyses of documents to give assurance of genuineness, to detect evidence of erasure, alteration, addition, interpolation, forgery of signature, identity of handwriting and typewriting and to develop information concerning ink, paper, writing instrument and other materials involved in these problems. Examiners prepare reports of their observations and conclusions, as well as, testify in court as expert witnesses.

(3) Whenever possible, a special agent desiring examination and analysis of a document should send the original rather than a photostat. This is to make sure that the examiner can properly analyze all characteristics of the document, including the writing, the instrument used, and the paper upon which the writing was done.

(4) Questioned document analysis is performed by the Midwest Region Document Laboratory. In addition, the facilities of the National Bureau of Standards and other Government laboratories, whose personnel include outstanding scientists in various fields of investigation are available. If the Midwest Region Document Laboratory cannot process a request, they will arrange to have the work performed elsewhere. Documents should be forwarded by registered mail to the ARC (Compliance), Internal Revenue Service, 10th Floor, One N. Wacker Drive, Chicago, Illinois 60606, Attn: QD Laboratory. The requester, before forwarding documents, may wish to contact the document examiners by phone to determine what is necessary to ensure a complete and satisfactory examination. The accompanying memorandum should describe the documents to be examined, the type of examination required (e.g., handwriting analysis, alterations, ink dating, etc.), and the required completion date.

(5) In some urgent situations an expeditious analysis may be necessary. In these instances, the Chief, CID will call the Special Enforcement Assistant, Midwest Region (who is the immediate supervisor of the Document Laboratory) to ascertain whether technical capabilities or workload will accommodate the urgency of the request. If the Midwest Region Document Laboratory is unable to perform the function for either reason, the Special Enforcement Assistant will grant permission and make arrangements for the analysis to be performed elsewhere. The Chief, CID will confirm approved telephonic request in writing by memorandum to the ARC (Compliance) Midwest Region.

357 (1-18-80) 9781
Record Retention Requirements

357.1 (1-18-80) 9781
General

(1) Except for farmers and wage-earners, any person subject to income tax or required to file an information return of income must keep permanent books of account or records, including inventories, to establish their gross income, deductions, credits or other matters for tax or information return purposes. Farmers and wage-earners whose gross income includes salaries, wages or similar compensation are required to keep records which will enable the District Director to determine the correct amount of such income subject to tax. They need not keep the permanent books of account or records required of others. [26 USC 6001]

(2) Required books or records should be available at all times for inspection by authorized internal revenue officers or employees and should be retained as long as the contents may become material in administering any internal revenue law. Employment tax records must be kept for four years after the due date of such tax or the date such tax is paid, whichever is later. [26 USC 6001]

357.2 (1-18-80) 9781
Record Requirement Guidelines for ADP Systems

(1) Taxpayers who maintain their records on an automated accounting system are required to provide for a program [Rev. Proc. 64-12 I.R.B. 1964-8.] which:

(a) writes out general and subsidiary ledger balances (such as accounts receivable, accounts payable, inventories and fixed assets) at regular intervals;

(b) makes supporting documents, including invoices vouchers and general journal

vouchers, readily available to the Internal Revenue Service upon request;

(c) makes clear and concise logical procedural directives available for examination, including procedural audit trails, up-to-date operation logs and flow charts and block diagrams of all equipment operations;

(d) provides adequate record retention facilities for storing tapes, print-outs and supporting documents for the time required for record retention in accordance with IRC of 1954 and current regulations. Such facilities also should allow reasonably easy access to listings and records required for examination purposes.

(2) Taxpayers who cannot provide for the above records within their ADP system must provide sufficient records outside the system to meet the Internal Revenue Service requirements.

357.3 (1-18-80) 9781
Inadequate Records

(1) If, during a joint investigation relating to an income tax liability, it is determined that the taxpayer has failed to comply substantially with the provisions of the law and regulations in maintaining necessary records, the cooperating internal revenue agent will orally inform the taxpayer thereof. The special agent will determine the appropriate time during the investigation to inform the taxpayer of the inadequacies of his/her records so as not to adversely affect the development of the investigation nor prejudice the criminal potential of the case.

(2) The cooperating revenue agent will include in the transmittal letter of his/her examination report a clear concise statement specifying in what respects the taxpayer's records are inadequate. The statement will be the basis for issuance of an inadequate records letter notice to the taxpayer; however, the time of issuance of the letter notice to the taxpayer must be approved by the special agent so as not to adversely affect the investigation nor prejudice the criminal case.

(3) If prosecution is recommended by the special agent, the special agent will make reference in the final report to the statement in the revenue agent's transmittal letter regarding the inadequacy of records and will indicate whether an inadequate records letter notice was issued to the taxpayer. (See IRM 4297 for Examination Division procedure respecting the issuance of the inadequate records letter notice to the taxpayer.)

(4) See also IRM 9552.

357.4 (1-18-80)

9781

Criminal Penalties

See Handbook text 415.24.

360 (1-18-80)

9781

Summons**361** (1-18-80)

9781

Provisions of Law

(1) The provisions of the law relating to the use and enforcement of a summons are contained in the following sections of the Internal Revenue Code of 1954:

(a) IRC 7602—Examination of Books and Witnesses;

(b) IRC 7603—Service of Summons;

(c) IRC 7604—Enforcement of Summons;

(d) IRC 7605—Time and Place of Examination;

(e) IRC 7609—Special Procedures for Third-Party Summonses;

(f) IRC 7610—Fees and Costs for Witnesses;

(g) IRC 7622—Authority to Administer Oaths and Certify;

(h) IRC 7402—Jurisdiction of District Courts;

(i) IRC 7210—Failure to Obey Summons; and

(j) IRC 6420(e)(2), 6421(f)(2), 6424(d)(2), and 6427(g)(2) (gasoline, lubricating oil, and fuel credits).

(2) The Federal law prevails over state law, statutory or constitutional, and the state law, if in conflict, must yield. [*Falsone v. U.S.*] The words in the statute must be interpreted liberally to fulfill the purpose for which it was enacted. [*U.S. v. Third Northwestern National Bank*, 102 F. Supp. 879 D.C. Minn., 52-1 USTC 9302.] The power granted by the statute is inquisitorial in character and is comparable to that vested in grand juries. [*Falsone v. U.S.*]

362 (1-18-80)

9781

Authority To Issue a Summons

(1) The authority to issue a summons, examine records, and take testimony granted to the Secretary or the Secretary's delegate by IRC 7602 has been granted to the Commissioner of Internal Revenue by T.D. 6118, approved December 30, 1954, published in the Federal Register on December 31, 1954 (19 FR 9896), and in turn granted to special agents as well as various other Service employees by Delegation Order No. 4 (As Revised) (Exhibit 300-13). Adminis-

trative regulations published in the Federal Register must be judicially noticed. (See 323.4.)

(2) Third party summonses require advanced personal authorization by the issuing officer's case manager, group manager, or any supervisory official above that level. Such authorization shall be indicated either by the signature of the authorizing official on the face of the original and all copies of the summons or by a statement (on the face of the original and all copies of the summons) signed by the issuing officer that he/she had prior authorization to issue the summons. The statement shall include the date of authorization and the name and title of the authorizing official. See Delegation Order No. 4, as revised (Exhibit 300-13).

(3) "John Doe" summonses may be issued by The Chief, Criminal Investigation, only after obtaining pre-issuance legal review by District Counsel and a court order. (See Text 367.591).

(4) The Supreme Court has held that, although the investigation may result in a recommendation that a criminal prosecution be instituted against the taxpayer, an internal revenue summons may be issued under IRC 7602 in aid of an income tax investigation if it is issued in good faith and prior to a recommendation for criminal prosecution. [*Donaldson v. U.S.*]

363 (1-18-80)

9781

Considerations Regarding Issuance of Summons

(1) A special agent should use his/her best efforts to obtain information voluntarily from taxpayers and witnesses. If a person is uncertain that he/she should comply with the agent's oral request, his/her consent may often be obtained by acquainting him/her with the provisions of the Internal Revenue Code as printed on the reverse side of Form 2039A.

(2) When a taxpayer or a witness refuses to submit requested information, all surrounding circumstances should be fully considered before a summons is issued. The likely importance of the desired information should be carefully weighed against the time and expense of obtaining it, the probability of having to institute court action, and the adverse effect on voluntary compliance by others if the enforcement efforts are not successful.

(3) No set of specific, all-inclusive guidelines can be prescribed to be followed in all instances. Each situation must be analyzed in the

light of its particular and peculiar facts and circumstances. In this, there is no substitute for good judgment. Consideration must be given to the legal problems of enforcement, the problems of future cooperation of others, and the practical problem of obtaining the desired information and using the person summoned as a witness in subsequent criminal or civil proceedings.

(4) Pertinent law to be considered respecting the issuance of a summons to an individual taxpayer or member of a partnership is covered in 342.1-342.21.

364 (1-9-80)
Preparation of Summons (Form 2039)

9781

(1) The Form 2039 summons assembly is the form assembly to be used by all persons authorized to issue a summons under the provisions of IRC 7602.

(2) The Form 2039 summons assembly consists of five parts, as follows:

(a) *Original* (Form 2039)—“Summons,” with the “Certificate of Service of Summons and Notice” on the reverse side;

(b) *Part A* (Form 2039-A)—“Summons” (first attested copy), with a reprint of pertinent IRC provisions on the reverse side;

(c) *Part B* (Form 2039-B)—“Notice to Third-party Recipient of IRS Summons”;

(d) *Part C* (Form 2039-C)—“Summons” (second attested copy), with a reprint of pertinent IRC provisions on the reverse side; and

(e) *Part D* (Form 2039-D)—notice explaining the rights to stay compliance and intervene, with a reprint of IRC 7609 on the reverse side.

(3) The faces of the first attested copy (Form 2039-A) and the second attested copy (Form 2039-C) shall be exact copies of the face of the original (Form 2039), except for the preprinted annotations and form numbers.

(4) Special care must be exercised to prepare a summons in accordance with the legal requirements. Therefore, the summons will be prepared in compliance with the instructions contained in Exhibit 300-14.

365 (1-18-80)
Service of Summons

9781

(1) A summons should be served in accordance with the provisions of IRC 7603, which are set forth in Exhibit 300-14. Briefly, Form 2039A should be handed to the person to whom it is directed, or left at his/her last and usual place of abode in the place where the person summoned will be most likely to find it. Casual “on the spot” preparation and service of the summons should be avoided where possible. The same seriousness and dignity as that attendant to giving information about the constitutional right against self-incrimination should be present. The impact and value would be diluted by casualness and might encourage defiance and noncompliance.

(2) It is preferable to serve the copy of the summons upon the person to whom it is directed. If he/she cannot be readily located, efforts should be made to serve it at his/her last and usual place of abode upon some responsible person who is 16 years of age or older, with instruction that it be given to the person summoned. This procedure will probably result in better compliance than that of merely leaving a copy at the last place of residence.

(3) After completion of the certificate of service, Form 2039 should be placed in the administrative file in the office of the issuing division to be used as the basis for enforcing compliance if such is necessary.

(4) When a witness requests that he/she be served with a summons as evidence of his/her legal duty to produce records or testify and indicates that he/she will voluntarily comply therewith, it should be issued for such purpose (see Policy Statement P-4-2). The summons should be properly prepared and the required notice given, if appropriate (see IRM 9368).

(5) If information requested by a summons is later determined to be unnecessary, compliance with the summons may be waived by the issuing official, provided the summons has not been referred for enforcement. If the summons has been referred for enforcement, concurrence of the Counsel office handling the summons enforcement must be obtained before compliance may be waived.

(6) Witness fees and payments for mileage may be made to all summoned witnesses, whether the witness be a third-party witness, the taxpayer, or the taxpayer's representative (see text 368.2). Reimbursement for search, reproduction, and transportation costs may be made to summoned witnesses other than the taxpayer or an officer, employee, agent, accountant, or attorney of the taxpayer, who, at the time the summons is served, is acting as such. If the person summoned is a third party entitled to reimbursement for search, reproduction, and transportation costs (see text 369), he/she will be given the notice explaining the payment procedures (Form 2039-B). If this information is inapplicable, Form 2039-B should be discarded.

(7) If the summons is served on a third-party recordkeeper and the noticee is entitled to notice of its issuance (see IRM 9368), the second attested copy (Form 2039-C) will be provided to the noticee by the officer serving the summons along with the notice (Form 2039-D) explaining the rights to stay compliance and intervene. If more than one person is entitled to notice of the issuance of summons, the summons and notice may be reproduced to provide such notification. This would occur, for example, in a situation where a bank account is listed in two names even if the two persons reside at the same address.

(8) If the summons is not served on a third-party recordkeeper or notice is not required, the second attested copy (Form 2039-C) and the notice (Form 2039-D) should be discarded.

366 (1-18-80)

9781

Time and Place of Examination

(1) The time and place of examination must be reasonable under the circumstances. [26 USC 7605(a)] The date fixed for appearance must be not less than 10 days from the date of a summons issued under the provisions of paragraph (2) of IRC 7602, [26 USC 7605(a)] but the witness may voluntarily comply at an earlier time.

(2) If the prospective witness is cooperative and an affidavit rather than a question and answer statement is desired, the summons should be made returnable, if feasible, at the place that will best suit his/her convenience. The same practice should be followed respecting the examination of records. If a question and answer statement is needed and reference to the witness' records will be essential it may be prefer-

able for the Service stenographer to appear at the office of the witness when interrogated.

(3) If the witness is uncooperative or attempts to hamper the investigation it may be advisable to have him/her produce his/her records at the agent's office. However, this should not be done to penalize the witness. A revenue agent's office, 25 miles away, was held to be a proper place for an estimated 4 months' examination of a corporation's records when its officers and employees interfered with the agent's examination. [*U.S. v. United Distillers Products Corp.*]

367 (1-18-80)

9781

Examination of Books and Witnesses**367.1** (1-18-80)

9781

Persons Who May Be Summoned

(1) A summons may be issued to:

- (a) The person liable for tax or required to perform the act;
- (b) Any officer or employee of such person;
- (c) Any person having possession, custody, or care of books of account containing entries relating to the business of such person; or
- (d) Any other person the issuing officer deems proper. [26 USC 7602]

367.2 (8-13-81)

9781

Purpose of Examination

(1) A summons may be issued for the purpose of examining books and records of taxpayers and third parties and obtaining testimony under oath that may be relevant or material in:

- (a) Ascertaining the correctness of any return,
- (b) Making a return where none has been made,
- (c) Determining a tax liability, or
- (d) Collecting such liability. [26 USC 7602]

(2) A summons cannot be issued for any other purpose, such as: a grand jury investigation; a personnel examination; an enrollment case; an investigation of perjury or false statements, if not related to tax matters; a current year tax investigation, if a return has not been filed and is not due. However, if a taxpayer's current year is closed on jeopardy, a summons

may be issued if a determination of his/her tax liability is involved.

(3) A summons may properly be issued in aid of internal revenue investigations which have a civil purpose, notwithstanding the fact that the information might also be used in a criminal prosecution. [*Donaldson v. U.S.*; *Boren v. Tucker*; *Venn v. U.S.*] A summons may not be issued solely for a criminal purpose. [*U.S. v. LaSalle National Bank*]. Although a summons may be issued after a search warrant has been obtained and executed in a case involving the same taxpayer [*United States v. First National Bank of Atlanta*; *United States v. Zack*], a summons is not proper after the case is referred for criminal prosecution; if an institutional commitment to make a referral for criminal prosecution has been made; or if the Service has abandoned, in an institutional sense, the pursuit of a civil tax determination or the collection of that tax. [*U.S. v. LaSalle National Bank*].

(4) The right to examine carries with it a right to make photostatic copies, at least where there is a need for a handwriting analysis. [*Boren v. Tucker*]

(5) The purpose of a summons is not limited to obtaining records for what the Government already knows, therefore the Government is permitted to indulge in some "fishing." [*U.S. v. Third Northwestern National Bank*] The inquiry cannot amount to an inquisition or arbitrary inquiry on the part of the tax investigators. A reasonable basis for making the inquiry must exist. What is justifiable "fishing" will be determined from all the facts in each case including the end for which the information is sought. The investigation must not be an unreasonable burden on the third party whose records are sought. [*U.S. v. Third Northwestern National Bank*]

367.3 (1-18-80) 9781 Limitations on Authority of Summons

367.31 (1-18-80) 9781 Materiality and Relevancy

(1) The examination must bear upon matters required to be included in the returns under examination. [*First National Bank of Mobile*] The courts have held examinations to be unwarranted when conducted for ulterior purposes, such as to obtain evidence to aid the Government in defense of a suit by a taxpayer for an overpayment of taxes for a year previously examined by the Service, [*Pacific Mills v. Kenefick*] to aid the Department of Justice in the criminal prosecution of a taxpayer under indictment following the completion of a special agent's investigation and the submission of his report, (although indictment brought to prevent bar by statute of limitations after prolonged resistance to summons previously served, does not render the summons unenforceable) and to use in investigating the tax liabilities of unknown and unidentified persons who may have failed to report their income. However, a corporation was required to submit records showing names and addresses of its customers, since inquiring of them should enable the Service to ascertain what they paid the taxpayer corporation for services rendered. [*In Re International Corp. Co.*; *Miles v. United Founders Corp.*] Having obtained their names and addresses, the Service could then examine their tax liabilities, if it so desired.

(2) The requirement for showing relevancy was not satisfied where the summons was couched in general terms and did not specify the particular documents desired, [*Local 174, etc. v. U.S.*] or where it called for a bank to produce all books, papers and records of whatever nature, irrespective of whether they also pertained to similar transactions with persons other than the named taxpayer, [*First National Bank of Mobile v. U.S.*] and where there was nothing more than the mere declaration of the special agent respecting the relevancy of a particular document. [*Hubner v. Tucker*]

367.32 (1-18-80) 9781 Examinations Barred by Statute of Limitations

(1) The statute does not require the Service to show probable cause to suspect fraud. [*U.S. v. Max Powell*; *Bayard Edward Ryan v. U.S.*] Where a special agent has served a summons covering a closed year, the Government need only show, to obtain enforcement: a legitimate purpose; that the inquiry may be relevant to that purpose; and that it does not already have the information; and that if the records have already been examined, written notice of additional examination has been given the taxpayer.

(2) A taxpayer seeking to prevent enforcement of a summons on the ground that it covers closed years has the burden of showing that it would be an abuse of court process. The taxpayer does not satisfy that burden by merely showing that the statute of limitations has run or that the records have already been examined. [*U.S. v. Max Powell*; *Bayard Edward Ryan v. U.S.*]

367.33 (1-18-80)

9781

Statutory Restriction on Summons

(1) The principal statutory restriction placed on the power to summon and to examine a taxpayer's books of account is found in IRC 7605(b), which provides that no taxpayer shall be subjected to unnecessary examination or investigations and that only one inspection shall be made of his/her books for each taxable year, except upon notice from the Commissioner or upon the taxpayer's request. See Delegation Order 57, as revised.

(2) Authority has been delegated to each District Director to sign the notice to the taxpayer that an additional inspection of his/her books of account is necessary. [IRM 9324.4:(2)]

(3) The limitations imposed by IRC 7605(b) apply only to the taxpayer under investigation and not to a third party. [*Hubner v. Tucker*] The taxpayer may refuse access to his/her records until he/she is given the notice of demand in writing. [*Philip Mangone Co. v. U.S.*] However, after his/her records have been examined respecting his/her own liability, he/she cannot refuse on the ground of an unnecessary examination, to give information from them, concerning another taxpayer. [*Hubner v. Tucker*]

(4) Whether enforcement of summons to examine records will be prohibited as unnecessary is a question to be determined from the facts in each case. A court may refuse enforcement if an agent attempts to examine unrelated transactions or engage in an "irrelevant fishing expedition." [*Zimmerman v. Wilson*] (See Subsections 241.34 and 351.3.)

367.34 (1-18-80)

9781

Constitutional Rights of Persons Summoned

Stated generally, the Fifth Amendment to the Constitution provides that no person shall be compelled to be a witness against himself/herself. As regards the privilege against self-incrimination, information or evidence furnished voluntarily by an individual taxpayer or witness who has been summoned may be used even though of an incriminatory nature. The mere fact that a taxpayer or witness would not have appeared before an agent but for the summons does not mean that his/her testimony or evidence was given under compulsion and is therefore inadmissible. Although the individual is required by summons to appear before an agent, the question is whether it can be shown

that the individual was not thereafter compelled to testify as to incriminatory matters. While a warning of consituional privilege against self-incrimination may not be required as a matter of law, such warning may have substantial significance from an evidentiary standpoint in overcoming a contention that the testimony or information was given involuntarily, under compulsion. Accordingly, the procedures outlined in IRM 9384 will be followed to ensure advice to possible subjects of investigation as to their constitutional rights. A witness who contends that the testimony or information was given involuntarily, under compulsion, has the burden of sustaining that contention.

367.35 (1-18-80)

9781

Privileged Communications and Summons

In some situations, witnesses, particularly attorneys, may decline to submit information on the ground that it is a privileged communication. This subject is covered in text 344.

367.36 (1-18-80)

9781

Destruction of Records Summoned

Witnesses whose records have been summoned by The Service are required to exercise a duty of care to safeguard the records to they will be available when they are required to be produced. (In *Re D.I. Operating Co.; U.S. v. Boudreaux*; *U.S. v. Edmond*). If the special agent has reason to believe that destruction is likely, it may be appropriate to draft a letter advising the witness of the requirements of the law regarding the preservation of summoned records.

367.4 (1-18-80)

9781

Taxpayer—Records and Testimony**367.41** (1-18-80)

9781

General

Inquiries of a taxpayer are "strictly inquisitorial, justifiable because all the facts are in the taxpayer's hands." [*Bolich v. Rubel*] The taxpayer cannot determine which of his/her books and papers are relevant to an investigation of his/her tax liability. That is for the Service to decide, at least initially. [In *Re International Corp. Co.*] All of a taxpayer's records of finan-

cial transactions for the period involved or for the periods which are reasonably relevant are pertinent to a verification of his/her returns. [In *Re International Corp. Co.*] Accordingly, a taxpayer cannot refuse to submit records on the ground that it is a tax exempt organization [*U.S. v. Stiles*] or that the income earned while residing in a foreign country is not taxable. [Application of *Carroll*] Neither can he/she refuse, on the grounds of the Fourth or Fifth Amendments, to appear in response to a summons requiring him to testify or produce records. He/she must make the appearance, after which he/she may refuse, on Constitutional grounds, to show records or to answer specific questions. See text 342.12:(1) and (2).

367.42 (1-18-80) 9781
Taxpayer's Records in Possession of Others

367.421 (1-18-80) 9781
Taxpayer's Records Voluntarily Turned Over to Others

Since the taxpayer's privilege not to surrender his/her books and records is personal, it has been held that an individual taxpayer's records can be obtained by summons when in the independent possession of third parties, including the taxpayer's accountant [*Falsone v. U.S.*; *Couch v. U.S.*] or attorney, if the latter merely performs clerical or financial service. [*U.S. v. Chin Lim Mow*] Generally, an attorney cannot refuse to produce workpapers prepared and delivered to him/her by the taxpayer's accountant, since they remain the property of the accountant and are not privileged, although one reported case has held to the contrary. [In *re House*.] However, it has been held that a warehouse in which an individual stored his records was a mere custodian without personal rights in them, and that the individual retained constructive possession and control, entitling him to contest enforcement of a grand jury subpoena for their production on the ground that it violated his constitutional rights. [*Schwimmer v. U.S.*]

367.422 (1-18-80) 9781
Taxpayer's Records Involuntarily Turned Over to Others

A person cannot successfully resist the production of his/her records where another obtains possession and control by operation and

due proceedings of law. [In *re Fuller*.] Thus, a taxpayer's records have been obtained from a referee in bankruptcy, [In *re Fuller*.] a Federal court where they had been impounded, [*Perlman v. U.S.*] a State attorney general, who obtained them by subpoenas, [*Fuller v. U.S.*] a thief, [*Burdeau v. McDowell*] a clerk of a State Court, [*Davis v. U.S.*] a Federal prison official, [*Stroud v. U.S.*] and U.S. Customs agents. [*Nero v. U.S.*]

367.5 (1-18-80) 9781
Summons on Third Parties—Records and Testimony

367.51 (1-18-80) 9781
General

(1) A third party witness need not produce a summoned document unless it is in his/her possession and relevant to the tax liability of the person named, or material to the inquiry. [*Local 174 etc. v. U.S.*] In addition, the witness may claim his/her individual right against self-incrimination, (text 343.2) and the demand for records must not be unreasonable or oppressive. [*Hubner v. Tucker*] However, after service of summons, deliberately divesting oneself of possession of documents to avoid production will not excuse the noncompliance. In fact, persons summoned to produce records, who conspire to conceal them and falsely state that they have been stolen, may be prosecuted under 18 USC 1001 for making false statements and 18 USC 1503 for obstructing justice. [*U.S. v. Curcio*]

(2) In a fraud case, a test as to whether the examination would impose an unreasonable burden is whether the facts show a reasonable ground of suspicion or probable cause for the examination to ascertain if there has been a fraud. [*U.S. v. Third Northwestern Natl. Bank*] The burden upon the third party must be considered in relation to the expected degree of success in finding documents bearing upon the tax liability of the taxpayer being investigated. If the third party must do considerable work at his/her own expense to supply the requested information, the performance of such a task can be made reasonable and brought within the scope of the statute only if there is some proof of a likelihood that among the many records to be checked will be papers relevant to the tax liability of a particular taxpayer. [*U.S. v. Third Northwestern Natl. Bank*]

(3) Courts have stated that if the Service can meet the foregoing test, a summons will be enforced even though the third party's task of searching and examining may require 10 or 15 days, [*U.S. v. Third Northwestern Natl. Bank*] or may involve several thousand items. [*First Natl. Bank of Mobile v. U.S.*]

(4) The taxpayer cannot prohibit the production of a third party's records, since the privilege is personal to the owner of the records, [*Zimmerman v. Wilson*; *Grant Foster v. U.S.*] and the third party cannot assert the privilege of self-incrimination on behalf of the taxpayer, since such a defense is personal to the one making the claim. [*Hale v. Henkel*]

(5) The ten-day waiting period provided by IRC 7605(a) is for the benefit of the person to whom the summons is directed. The taxpayer has no standing to object to a waiver of this provision. [*Brunwasser v. Pittsburgh National Bank*]

(6) In *Reisman v. Caplin* a taxpayer's attorneys attempted on his behalf to restrain enforcement of a summons served by a special agent on accountants retained by the attorneys to assist them in their clients' defense. The Supreme Court stated that a person affected by disclosure (taxpayer), as well as the person summoned, may appear or intervene before the District Court or hearing officer (special agent) to challenge the summons, and that for this reason the injunction suit was improper.

(7) The Supreme Court held that an individual has no right to intervene in a summons proceeding where the summons was directed to a third person and had to do with records in which the taxpayer has no proprietary interest, which are owned and possessed by the third person and which related to the third person's business transactions with the taxpayer. [*Donaldson v. U.S.*]

367.52 (1-18-80) **Summons on Banks**

9781

367.521 (1-18-80) **General**

9781

Banks are one of the major groups on which continuous demands for information are made. The depositor has no proprietary interest in the bank's books and records and the bank cannot refuse production of its records on the basis that some of the entries relate to transaction of persons other than the designated taxpayer. [*Cooley v. Bergin*] On the other hand, a bank will

not be required to produce all its records so that the Service can determine whether any of them contain information relating to a return under investigation. [*First Nat'l. Bank of Mobile v. U.S.*]

367.522 (1-18-80) **Summons on Foreign Branch Banks**

9781

A summons on a bank to produce records of one of its foreign branches is enforceable unless compliance would constitute a violation of the laws of the foreign country. [*The First National City Bank of New York v. Internal Revenue Service*; *In re Rivera*] The basis for compelling production of records is that a bank, like any other corporation, is presumed to be in possession and control of its own books and records. The *First National City Bank* case states:

"Any officer or agent of the corporation who has power to cause the branch records to be sent from a branch to the home office for any corporate purpose, surely has sufficient control to cause them to be sent on when desired for a government purpose properly implemented by a subpoena under 26 USC 7602."

367.523 (1-18-80) **Summons On Domestic Branches of Foreign Banks**

9781

(1) The United States courts have jurisdiction over a domestic branch of a foreign corporation and over its records located in this country (text 367.53). Accordingly, a subpoena issued by an administrative agency was enforced for production of records in the possession of the domestic branch of a foreign nonbanking corporation. [*Securities & Exchange Commission v. Minas De Artemisa*] On the other hand, a court subpoena issued to a New York City branch of a Canadian bank was enforced only for production of records in that branch, but not for records in a branch located in Canada. [*U.S. v. Kyle*] In refusing to compel production of the Canadian branch records, the court held that the records of the Canadian branch were not under the control of the New York branch office.

(2) If the domestic branch sends its records to the foreign bank for storage, the domestic branch may have relinquished control over such records. The question whether summons for such records served on the foreign bank as a corporate entity could be enforced would depend upon whether the foreign bank or a corporation "resides in or can be found in this coun-

try" for the service of a summons and judicial process. This determination requires a close analysis of the relationship between the foreign bank and its domestic branch—a matter which the special agent should refer to his/her group manager.

367.53 (1-18-80) 9781
Summons for Records of Foreign Companies

(1) The determination whether a foreign corporation must produce its records for inspection by the Service and other Federal agencies depends in general on whether it is found doing business in this country or has an agent doing business here. [In Re Grand Jury Subpena Duces Tecum.]

(2) A foreign corporation was required to comply with a grand jury subpoena (the summons power of the Internal Revenue Service is comparable to the subpoena power of a Federal grand jury) [Brownson v. U.S.] or summons in instances where:

(a) It had a bank account and salaried employees here and shipped newsprint into this country. [In Re Grand Jury Subpena Duces Tecum, *supra*]

(b) It was found to be doing business through wholly owned subsidiaries, in this country. [In Re Electric & Music Industries, Ltd.]

(c) The corporate president, who was served with a subpoena, conducted all of the business of a Mexican corporation, except the actual operation of its mines, from his home in Arizona. The corporate records were in Mexico, but the court pointed out that if the Mexican law forbade their removal to this country the Commission (S.E.C.) could inspect them at the Mexican office or have authenticated copies made and submitted. [Securities & Exchange Commission v. Minas De Artemisa]

(3) The president of a nonresident Panamanian corporation was ordered to produce the corporation's records in his possession and control pursuant to a summons served on him in New York, on the theory that it was directed to him as an individual and not to the corporation which might not have been amenable to service of process. [International Commodities Corp. v. Internal Revenue Serv.] However, where such records are held in a purely personal capacity, their production may be successfully resisted

on the ground of possible self-incrimination. [Application of Daniels]

367.54 (1-18-80) 9781
Other Third Parties

(1) The courts have enforced compliance with summonses or subpoenas calling for the production of records by various third parties, [Falsone v. U.S.] including accountant's workpapers, attorney's files, involving agency or record keeping matters, [Pollock v. U.S.] hospital records, excluding nature of illness, broker's records, [Zimmerman v. Wilson] telegraph records, [Brownson v. U.S.] records of large impersonal partnerships, relating to a partner's transactions, [U.S. v. Onassis; In Re Subpena Duces Tecum.] and records of an unincorporated labor union concerning transactions of its officers. [U.S. v. White]

(2) The dissolution of a corporation will not relieve its officers of the duty of producing its existing records within their control. [Curcio v. U.S.]

367.55 (1-18-80) 9781
Use of Summons—Special Applications

367.551 (1-18-80) 9781
Use of Summons to Obtain Information Concerning the Finances of a Political Organization

(1) For purposes of this text, the term "political organization" includes a political party, a National, State, or local committee of a political party, and campaign committees or other organizations that accept contributions or make expenditures for the purpose of influencing the selection, nomination, or election of any individual for elective public office. The term "political organization" does not include an organization to which the taxpayer is the only contributor.

(2) For purposes of this text, information concerning the finances of a political organization includes testimony or documents that disclose the identity of contributors or recipients of expenditures.

(3) Except as provided in (5) below, a summons will not be used to obtain testimony or documents requiring a general disclosure of the finances of a political organization. If the information sought by a summons would generally disclose the finances of a political organization, this restriction applies even though the testimony is to be obtained from, or the documents are owned or possessed by, a source that is not a political organization. For example, a summons to a bank for all of its records of the bank accounts of a political organization is within the coverage of this text.

(4) A summons may be used to obtain testimony or documents concerning the finances of a political organization provided that compliance with the summons would not require a general disclosure of the finances. Such a summons will be restricted to information relating to the tax liability of named taxpayers under examination or investigation. The summons must specifically identify the taxpayer's transactions with the political organization and will be so limited as to require only testimony or documents relating to those transactions or to other transactions of the same type. If, however, the taxpayer's transactions with the political organization are known to have occurred through the use of an intermediary person or organization, the summons may require testimony or documents relating to specifically identified transactions of the intermediary with the political organization.

(5) If an exception to the provisions of (3) above is desired, or if issuance of a summons in conformity with (4) above is desired, a memorandum request, explaining in detail the necessity for the issuance of such a summons, together with a copy of the proposed summons, will be submitted by the Chief, Criminal Investigation Division, with the concurrence of the District Director (for OIO, the Director of International Operations), through channels to the Director, Criminal Investigation Division who may submit the request to the Assistant Commissioner (Compliance) for prior written approval. If time is of the essence, a telephonic request will be made to the Director, Criminal Investigation Division who may submit the request to the Assistant Commissioner (Compliance), for prior approval. A memorandum setting forth the details will be prepared by the Chief, Criminal Investigation Division and forwarded immediately through channels to the

Director, Criminal Investigation Division in all situations in which a telephonic request has been made under this procedure.

(6) If there is a question as to the legal sufficiency of the proposed summons, and time permits, it should be referred to District Counsel for a preliminary legal review, prior to referral of the request to the National Office for approval.

367.552 (1-18-80)

9781

Summons for Information Pursuant to Tax Treaties

A summons may be issued to obtain information from individuals and entities within the United States, relating to the foreign tax liability of a foreign citizen, in response to formal requests made through the Office of International Operations by foreign tax authorities pursuant to the provisions of the tax treaty between that country and the United States.

367.553 (1-18-80)

9781

Restrictions on Examination of Churches

IRC 7605(c) and 26 CFR 301.7605-1(c)(2) impose certain restrictions on the examination of the books of account of a church or convention or association of churches. Before attempting to secure or examine such records, special agents shall ensure that they have complied with the provisions of the IRC and regulations cited above. District Counsel may be consulted, as necessary. (See also Delegation Order No. 137 as revised.)

367.554 (1-18-80)

9781

Summons for Records Outside the United States

Before issuing a summons where the records are outside the United States, a copy of the proposed summons will be submitted, through channels, to District Counsel for review. District Counsel will coordinate their review with Chief Counsel (CC:GL:I), who in turn will coordinate the matter with the Director, Criminal Investigation Division. The proposed summons will be accompanied by a statement describing the circumstances and efforts that have been made to secure the records and data from the taxpayer and why the taxpayer will not make the requested records available. In no event will the special agent issue the summons until advice has been received from Counsel.

367.555 (1-18-80) 9781
**Information from Federal Officials
and Employees**

No summons will be issued to Federal officials or employees for information they may possess or know in connection with their official responsibilities. Such information may ordinarily be obtained through liaison with the agency involved (for example, see IRM 9264.2, IRM 9375, IRM 937(10), and text 330 of this Handbook. Requests for assistance in situations not covered by existing guidelines should be referred, through channels, to the Director, Criminal Investigation Division (attn: CP:CI:O).

367.556 (1-18-80) 9781
**Criminal Cases Pending with
Justice**

No summons shall be issued in connection with a criminal case pending with the Department of Justice either to obtain further information from the taxpayer or a witness or to uncover assets to apply against assessed liabilities unless clearance is first obtained from that Department through the District Counsel, and the Chief Counsel. (See Policy Statement P-4-2.)

367.56 (1-18-80) 9781
**Special Procedures for Third-
Party Recordkeeper Summons**

367.561 (1-18-80) 9781
Statutory Requirements

(1) IRC 7609 generally provides that:

(a) a taxpayer or other person must be notified if a summons has been served on a third-party recordkeeper to produce records or give testimony relative to records made or kept of the business transactions or affairs of the taxpayer or other person who is identified in the description of the records contained in the summons, except when a summons is used to determine the identity of a person having a numbered account or similar arrangement, to aid in the collection of a tax liability, or to determine the existence of records;

(b) any person who has the right to notice has the right to stay compliance with the sum-

mons and to intervene in an enforcement proceeding with respect to the summons;

(c) notice is not required where the Service first obtains a court order based on allegations that there is reasonable cause to believe that notice may lead to material interference with the investigation or examination;

(d) intervention or staying compliance with the summons by the taxpayer or his/her agent suspends the running of the statute of limitations for civil and criminal purposes during the period when a court proceeding and appeals related thereto are pending; and

(e) a "John Doe" summons will be issued pursuant to a court order.

367.562 (1-18-80) 9781
Definitions

(1) *Summons*—In this section reference is to an administrative summons which is issued under paragraph (2) of IRC 7602 or under 6420(e)(2), 6421(f)(2), 6424(d)(2), or 6427(f)(2); and is served on a third-party recordkeeper requiring the production of any portion of records made or kept of the business transactions or affairs of any person (other than the person summoned) who is identified in the description of the records contained in the summons. This section does not apply to certain summonses enumerated in IRM 9368.3 below.

(2) *Third-party recordkeeper*—The term applies to any bank, savings and loan institution or credit union; any consumer reporting agency covered by the Fair Credit Reporting Act; any one extending credit through the issuance of credit cards or similar devices; any broker included in the Securities Exchange Act of 1934; any attorney; and any accountant. The procedures in IRC 7609 apply generally to situations in which the recordkeeper makes or keeps records of the business transactions or affairs of a person identified in the description of the records contained in the summons. All persons who extend "credit through the use of credit cards or similar devices" fall within the scope of these procedures notwithstanding the fact that the principal business of that person may be

something other than the issuing of credit cards. For example, telephone companies and others such as retail stores and oil companies who extend credit through their own credit cards would be considered "third-party record-keepers." Any retail establishment that does not extend credit through its own credit card or similar device (i.e., some physical object evidencing credit) will not be considered a "third-party recordkeeper." Thus, retail establishments that honor credit cards issued by other parties (e.g., Visa, American Express, Master Charge) will not be considered as extending credit since the issuer of the credit card is actually the lender rather than the retail establishment. If an agent issues a summons to a retail establishment or similar business which has its own credit card, but also honors credit cards such as Visa, American Express or Master Charge, notice will be given under Section 7609. This is due to the fact that it would be unduly burdensome for an agent to issue one summons for records of Visa or American Express transactions and another for records of transactions involving the summoned witness's own credit card. Notice is only required in cases where the Service is summoning records of the extensions of credit "through the use of credit cards or similar devices" and not when it is summoning records of other transactions. For example, if employee X works for credit card company A and also has one of A's credit cards, then no notice would be required in connection with a summons issued to A for X's employment records. However, notice would be required in connection with a summons issued to A for X's credit card records. In addition, if an independent contractor performs services for a retail establishment which issues its own credit card, no notice is required in connection with a summons issued to the retail establishment for the records relating to the services performed by the independent contractor.

(3) *Records*—This term includes books, papers, or other data; and a summons requiring the giving of testimony relative to the contents of records is to be treated as a summons requiring the production of records.

(4) *"John Doe" summons*—This is any summons which does not identify the person with respect to whose liability the summons is issued. Text 367.59 provides procedures required in the use of "John Doe" summons.

(5) *Numbered bank account*—An account with a bank or similar financial institution through which a person may authorize transactions solely through the use of a number, symbol, code name or similar arrangement not involving disclosure of the account owner's identity.

(6) *Stay compliance*—The stopping of compliance with a summons request by giving written notice to the person summoned not to comply and transmitting a copy of this notice to the Service official before whom the person summoned is to appear.

(7) *Intervention*—The act of a person, who is not originally a party to a summons enforcement court proceeding, becoming a party in order to protect his/her interests.

(8) *Noticee*—A person who has the right to notice, stay compliance and intervene when a summons is served on a third-party recordkeeper to produce records or give testimony relative to the contents of records which pertain to that person. For example, if the Service serves a summons on a bank for an account in the name of the taxpayer, the taxpayer is the noticee. If, in the matter of the tax liability of the taxpayer, a summons is served on the bank for the account of a third party, the third party is the noticee. In a summons enforcement action the bank would be the defendant. If the taxpayer (or other party) is clearly identified by name in the description of the records in the body of the summons, that person is entitled to notice of the summons having been issued. For example, when a summons is issued to X Bank for records in Y's account relative to Z, the taxpayer, notice will be given to both Y and Z. If the agent or officer knows prior to service of the summons that an account is styled in the names of more than one person then each person should be named in the body of the summons and should receive notice; for example, if the agent or officer knows that bank accounts are listed in the joint names of husband and wife then both the husband and wife should be identified in the description of the records sought and both should be given separate notice, even if they reside at the same address. In the case where records of a partnership are requested in the body of the summons, notice to one general partner is sufficient.

(9) *Date of service of notice*—The date on which the notice is placed in the mail or delivered personally.

367.563 (1-18-80)

9781

Exceptions to Notice Requirement

(1) There is no notice requirement in cases where:

- (a) a "John Doe" summons is issued;
- (b) the summoned witness is the taxpayer, officer or employee of the taxpayer;
- (c) a third-party witness is summoned to give testimony that is unrelated to records; or
- (d) the summoned witness is not considered to be a third-party recordkeeper as defined in text 367.562:(2).

(2) Notice is also not required where the stated purpose of the summons is to:

- (a) determine whether records of the business transactions or affairs of an identified person have been made or kept; or
- (b) determine solely the identity of any person having a numbered account (or similar arrangement) with a bank, savings and loan institution or credit union.

(3) Summonses issued pursuant to a court order:

(a) Notice shall not be required if, upon petition by the Service, prior to the issuance of the summons, the United States district court for the district within which the person to be summoned resides or is found, determines, on the basis of the facts and circumstances alleged, that there is reasonable cause to believe the giving of notice may lead to attempts to conceal, destroy or alter records relevant to the examination, to prevent the communication of information from other persons through intimidation, bribery, or collusion, or to flee to avoid prosecution, testifying or production of records.

(b) in the hearings required under (a) above, as well as those referred to in text 367.59, "John Doe" Summons, the determination shall be made ex parte and shall be made solely upon the petition and supporting affidavits. An order denying the petition is deemed a final order which may be appealed.

(c) except for cases the court considers of greater importance, a proceeding brought for the enforcement of any summons, or a proceeding under this exception, and appeals, take precedence on the docket over all cases and are to be assigned for hearing and decided at the earliest practicable date.

(d) requests for court orders will be forwarded to District Counsel for processing. Included in the memorandum should be a request

that the court order the person(s) to be summoned to refrain from notifying the taxpayer, or other person to whom the records or testimony pertain, of the service of the summons.

(e) the third-party recordkeeper will be advised that pursuant to a court order no notification will be given of the summons request and, if appropriate, that notification could subject the person summoned to a contempt citation.

367.57 (1-18-80)

9781

General Procedures for Notice, Staying Compliance and Intervention

367.571 (1-18-80)

9781

Period in Which Service Is Required To Give Notice

(1) In instances where a summons is served on any person who is a third-party recordkeeper requiring the production of records which relate to the taxpayer, notice shall be given to the taxpayer within 3 days of the date on which service is made and no later than 14 calendar days before the date fixed in the summons as to when the records are to be examined.

(2) Seventeen days generally (but, in no event, more than twenty days) will be allowed from the date of service of the summons to the time for compliance to ensure sufficient time for the notices of issuance of the summons and staying of compliance to be given.

367.572 (1-18-80)

9781

Right to Stay Compliance

(1) The taxpayer entitled to notice of the summons has the right to stay compliance with the summons, if not later than 14 days after the date on the notice: notice in writing is given to the person summoned not to comply, and a copy of the notice not to comply is mailed by registered or certified mail to the person before whom the person summoned is to appear at an address appearing on the face of the summons. Where the copy of the notification not to comply has not been received by the Service or the third-party recordkeeper within 3 days after the close of the 14-day period, the Service can presume that the notification has not been timely mailed and compliance should be forthwith. If the dates of serving the summons and the giving or mailing the notice and the copy of the summons are the same, no longer period is necessary.

367.563

MT 9781-1

(2) In instances where a summons is served on a third-party recordkeeper for records relating to a person other than the taxpayer, notice will be given to such person. He/she has the right to stay compliance and intervene in a summons enforcement proceeding.

(3) No examination may be made of any records required to be produced under a summons as to which notice is required before the expiration of the period allowed for the notice not to comply or when the requirements for staying compliance have been met, except with the consent of the person staying compliance or in accordance with an order issued by a court of competent jurisdiction authorizing examination of such records. The waiver must be in writing, prepared in duplicate with copies going to the person issuing the summons as well as the person summoned (see IRM 9368.45).

367.573 (1-18-80)

9781

Intervention in Summons Enforcement Proceedings

(1) Upon receipt of the notice to stay compliance, summons enforcement will ordinarily be commenced against the third-party recordkeeper in accordance with IRC 7604. The noticee has the right to intervene in the summons enforcement proceeding.

(2) The running of the statute of limitations for civil and criminal purposes is suspended with respect to the taxpayer if the taxpayer or an agent, nominee, or other person acting under the direction or control of the taxpayer stays compliance or intervenes during the period when a court proceeding and appeals related thereto are pending. The period tolled begins when the summons enforcement case is commenced in court and relates to the years under examination which are identified in the summons.

(3) Staying compliance or intervention by a person other than the taxpayer or his/her agent will not suspend the running of the statutes of limitation.

367.574 (1-18-80)

9781

Notice and Instructions to Noticee

(1) Included as part of Form 2039 is a notice which contains instructions concerning the noticee's right to stay compliance and intervene (Form 2039-D). It will be served on the noticee together with a copy of the summons (Form 2039-C) by the person serving the summons. Generally, notice will be given by certified or

registered mail to the last known address of the noticee. However, only registered mail should be used when the notice is mailed to persons in foreign countries. The law also permits service of notice by delivering both documents in hand to the noticee, or leaving them at the noticee's residence or, in the absence of a last known address, leaving them with the person summoned.

(2) If the Service has been advised under IRC 6903 of the existence of a fiduciary relationship, it is sufficient if the notice of the service of the summons is mailed to the last known address of the fiduciary of the person entitled to notice, even if such a person or fiduciary is now deceased, under a legal disability, or no longer in existence. The filing of a power of attorney or tax information authorization does not qualify as the creation of a fiduciary relationship under this provision and notice would be given to the taxpayer or other person to whom the records pertain.

(3) Certification of serving the summons as well as the certification of giving notice will be completed on the reverse side of the original copy of the summons.

(4) If a summons enforcement is instituted, the third-party recordkeeper, as well as the noticee, is entitled to notice of the enforcement action. Generally, the third-party recordkeeper will be served with process. The noticee will be informed by certified or registered mail. Such third-party notification will be the responsibility of the Department of Justice.

(5) Upon request by the party summoned of proof that notice has been given, the party summoned will be furnished a copy of the back of the original summons which contains certificates of the service of the summons and notice. Since the law requires that the noticee must notify both the summoned party and the Service in order to stay compliance, it is inappropriate for an agent to have to certify that no notice staying compliance has been received by the Service before the summoned party will comply with the summons.

367.575 (1-18-80)

9781

Waiver of Right to Notice, Stay of Compliance and Intervention

(1) A person who is entitled to notice, stay compliance and intervene when a summons is issued may waive such rights by executing a

general waiver form. A suggested Pattern Letter (P-549) for waiver purposes is included in Exhibit 300-16. All third-party recordkeepers involved in the waiver should be given a copy of the letter for their records.

(2) Payments for mileage, witness fees and expenses may be made to the third-party recordkeeper in accordance with Subsection 369 if a summons is issued.

367.58 (1-18-80)
**Coordination of Summons
Issuance and Enforcement
Actions**

9781

To the extent practicable, summonses pertaining to the same person shall be served and be submitted for enforcement action at or near the same time. Likewise, court requests by the Service for exemption from the requirement of notice relative to the same person shall be made at the same time, if possible.

367.59 (1-18-80)
"John Doe" Summons

9781

A "John Doe" summons is any summons which does not identify the person with respect to whose liability the summons is issued.

367.591 (1-18-80)
Issuance Procedures

9781

(1) A John Doe summons will be issued only by the officials authorized in Delegation Order No. 4 (as revised), and by them only after obtaining pre-issuance legal review by Regional Counsel (or Chief Counsel in the case of OIO). The provisions of the law which require court approval for the serving of the summons are contained in text 367.592.

(2) A statement of the pertinent facts and circumstances and justification for issuing the summons shall be submitted through District Counsel to Regional Counsel, including information to satisfy each of the statutory requirements contained in IRC 7609(f)(1) through (3). The wording to be used in the summons should also be discussed with Counsel.

(3) If Regional Counsel agrees that the summons should be issued, his/her concurrence should be endorsed on the face of the summons and all attested copies by the word "Reviewed" followed by the signature and title of the reviewing official.

367.575

MT 9781-1

(4) If Regional Counsel contemplates not concurring with the issuance of the John Doe summons, the matter should be discussed with the Chief, Criminal Investigation Division.

(5) If agreement cannot be reached, Regional Counsel will prepare and forward a memorandum to the District Director setting forth the reasons for nonconcurrence.

(6) If the District Director does not agree with Regional Counsel's conclusions, the matter will be referred to the ARC (Criminal Investigation) who will explore with Regional Counsel ways of reaching agreement on the action to be taken with regard to the John Doe summons.

(7) If agreement still cannot be reached, the matter will be referred to the Director, Criminal Investigation Division (Attn: CP:CI:O) with the recommendation that Chief Counsel be requested to consider the matter.

367.592 (1-18-80)
Service of John Doe Summons

9781

(1) IRC 7609(f) provides that a "John Doe" summons may be served only after a proceeding is held in the United States district court for the district where the person to be summoned resides or is found. The Service must establish that:

(a) the summons relates to the investigation of a particular person or ascertainable group or class of persons;

(b) there is a reasonable basis for believing that such person or group or class of persons may fail or may have failed to comply with any provision of the internal revenue law; and

(c) the information sought to be obtained from the examination of the records (and the identity of the person or persons with respect to whose liability the summons is issued) is not readily available from other sources.

(2) This procedure is inapplicable to summonses issued solely to determine the identity of any person having a numbered account (or similar arrangement) with a bank or similar financial institution.

367.6 (1-18-80)
**Restrictions on Disclosure of
Information Obtained by a
Summons**

9781

(1) Information obtained through the use of a summons is considered tax return information subject to the disclosure provisions of IRC 6103, IRC 7213, IRC 7217, and 18 USC 1905.

(2) Unless advance approval is obtained from the Assistant Commissioner (Compliance), no commitments will be made to taxpayers or third parties to provide a greater degree of confidentiality or limitation of use than is provided by existing law and regulation; to limit the disclosure of information, such as agreeing that information will not be turned over to other agencies otherwise entitled to disclosure of that information upon proper request; nor to impose other conditions regarding the acceptance and use of information by the IRS, such as agreeing to use tax data for civil purposes only.

368 (1-18-80) 9781 **Fees and Costs for Witnesses**

368.1 (1-18-80) 9781 **Authority**

(1) IRC 7610 provides for the payment of witness fees and mileage to summoned witnesses; and the payment of search, reproduction and transportation costs to certain third-party witnesses. Third parties complying with a summons will be paid under the terms and conditions set forth below.

(2) The search, reproduction, and transportation cost payments discussed in IRM 9369.3 are in addition to and not a substitute for a summoned witness's right to witness fees and travel expenses discussed in IRM 9369.2.

368.2 (1-18-80) 9781 **Witness Fees and Travel Expenses**

(1) Witness fees and travel expenses are amounts which, upon request, are payable to witnesses who for the purpose of giving testimony or producing records are required to appear before Service personnel in compliance with administrative summonses issued under IRC 7602, 6420(e)(2), 6421(f)(2), 6424(d)(2) or 6427(g)(2). Amounts for fees are prescribed in 28 U.S.C. 1821. They include a per diem rate and a rate per mile for associated travel. The procedures and conditions for payment of witness fees and mileage are not modified by requirements for reimbursement of third parties for search, transportation, and reproduction cost as provided for in text 369. Witness fees and payments for mileage may be made to all summoned witnesses, whether the witness be a third-party witness, the taxpayer, or the taxpayer's representative. Payment may be made whenever a summons (Form 2039) is issued,

regardless of the investigative state of the matter involved.

(2) Procedures for payment of witness fees and expenses are detailed below. Standard Forms 1156, Public Voucher for Fees and Mileage of Witnesses (Original); 1156a (Memorandum copy of SF 1156); 1157, Claim for Fees and Mileage of Witnesses (Original); and 1157a (Memorandum copy of SF 1157); will be used for this purpose.

(a) SF 1157 and 1157a will be prepared, with the assistance of the special agent if necessary, and signed by the payee. In the "Case No." space in the upper right corner, the notation "Form 2039" should be inserted. The special agent before whom the summoned person appears will review the claim and complete the lower portion of the forms to indicate approval for payment of the amount claimed.

(b) The special agent will complete the upper portion of SF 1156 and 1156a, including the "Summary of Payments" section. On the line provided for showing the name of court or board, the special agent will enter "Testimony before . . . (name and title of agent). . ."

(c) All of the above forms will be forwarded through channels to the Chief, Resources Management Division, for further processing. A check will be issued to the claimant by the Regional Disbursing Office.

(d) When the person summoned demands assurance or guarantee that payment will be made, an additional copy of SF 1157a will be prepared and furnished to the person. The special agent will insert the following statement immediately above the "Approved for \$" space in the lower portion of the form: "Payment of witness fees and travel expenses as stated above are guaranteed by the Internal Revenue Service."

(3) When the person summoned cannot comply unless travel expenses are furnished, an advance payment, not to exceed the amount allowable, may be made. The following procedures will be used in those instances:

(a) The special agent will prepare SF 1157 and 1157a in the name of the witness. He/she will also complete the upper portion of SF 1156 and 1156a and enter the date scheduled for testimony on the line provided. All forms will be marked "Advance Payment" and forwarded through channels to the Chief, Resources Management Division.

(b) After processing, the Fiscal Management Branch will forward the check to the claimant by certified mail, noted "Fc. Delivery to the Addressee Only." The certified mail return receipt will be associated with SF 1157a and retained in the Fiscal Management Branch.

(c) When the advance payment covers only a part of the allowable fees and travel expenses, the SF 1157 submitted for the remainder of the allowance will bear a reference of the SF 1157 covering the advance payment.

369 (1-18-80) 9781
Payments for Costs in Complying with Summons

369.1 (1-18-80) 9781
General

Pursuant to IRC 7610 and implementing procedures, payments may be made to third parties who request reimbursement for costs incurred in complying with a summons. These provisions apply to summonses complied with on or after January 11, 1977. Payments may be made to third parties without the issuance of a summons for records needed in an investigation which are available to the general public, under IRC Section 7801.

369.2 (1-18-80) 9781
Definitions

(1) Taxpayer—The person with respect to whose liability the summons is issued.

(2) Third Party—Any person served with a summons other than:

(a) a taxpayer; or

(b) an officer, employee, agent, accountant, or attorney of a taxpayer who, at the time the summons is served, is acting as such.

(3) Third Party Records—Books, papers, records, or other data in which the taxpayer does not have a proprietary interest at the time the summons is served.

(4) Directly Incurred Costs—Costs incurred solely, immediately and necessarily as a consequence of searching for, reproducing or transporting records in order to comply with a summons. Proportionate allocation of fixed costs (overhead, equipment depreciation, etc.) is not considered to be directly incurred. However, where a third party's records are stored at an independent storage facility that charges the third party a fee to search for, reproduce, or

transport particular records requested, such fees are considered to be directly incurred by the summoned third party.

(5) Search Costs—Include only:

(a) the total amount of personnel direct time incurred in locating and retrieving records or information; and

(b) direct costs of extracting information stored by computer. Salaries of persons locating and retrieving summoned material are not includible in search costs. Also, search costs do not include salaries, fees, or similar expenditures for analysis of material or for managerial or legal advice, expertise or search, nor does it include time spent for such activities.

(6) Reproduction Costs—Costs incurred in making copies or duplicates of summoned documents, transcripts, and other similar material.

369.3 (1-18-80) 9781
Delegation of Authority

(1) The Commissioner of Internal Revenue has delegated to the below-named officials the authority to obligate appropriated funds for making payment for search costs, reproduction costs and transportation costs in connection with complying with a third-party summons. See Delegation Order 178.

(a) Regional Commissioners, who will obtain the concurrence of the Assistant Commissioner (Compliance) through the Fiscal Management Officer, National Office, before obligating over \$5,000 for payment of such costs associated with any one summons. This authority may not be redelegated.

(b) District Directors and the Director of International Operations to obligate up to \$5,000 for payment of such costs associated with any one summons, with authority to redelegate to the Chief, Criminal Investigation Division with respect to any such obligation not exceeding \$2,500 except this authority in streamlined districts is limited to the District Director. This authority may also be redelegated to any officer or employee referred to in paragraph 1(d) of Delegation Order No. 4 (as revised) and 4b of Delegation Order No. 178 as having authority to personally authorize the issuance of a summons to a third party witness, with respect to any such obligation not exceeding \$1,000.

(2) In accordance with Delegation Order No. 4 (as revised), if a third party summons is issued by a special agent, the prior authorization by group manager or other supervisory official above that level is required as specified in the Order. However, to process the resultant third party invoice for payment as prescribed in text 369.5, certification is required by an official specified above as having obligational authority of the appropriate amount.

(a) In some cases, depending on the dollar amount involved, this could mean that two different individuals might be involved in authorizing issuance of a summons and in certifying its invoice for payment.

(b) To minimize this occurring, and thereby to expedite processing, the procedures described below should be followed.

1 The special agent issuing (or requesting issuance of) a third party summons should first make as reasonable an estimate as possible of the obligational authority level required for payment of the costs of compliance with the summons.

2 The issuing (or requesting) special agent should then initiate the necessary administrative action to have the summons approved, prior to issuance, by an official who has both approval authority under Delegation Order No. 4 (as revised) and the required level of obligational authority under Delegation Order No. 178.

369.4 (1-18-80)

9781

Basis for Payment

(1) Payment for search, reproduction and transportation costs will be made only to third parties served with a summons to produce third party records or information and only for material requested by the summons, unless the records are available to the general public.

(2) Payment will be made only for search, reproduction and transportation costs that are both directly incurred and reasonably necessary. In determining whether costs are reasonably necessary, it is essential to consider search, reproduction, and transportation costs separately.

(3) No payment will be made until the third party satisfactorily complies with the summons.

(4) No payment will be made unless the third party submits an itemized bill or invoice showing specific details concerning the search, reproduction and transportation costs.

369.5 (1-18-80)

9781

Payment Procedures

(1) Special agents who issue summonses to third parties must obtain prior managerial approval as required by Delegation Order No. 4 (as revised). The agent issuing (or requesting issuance of) a third party summons should first make as reasonable an estimate as possible of the obligational authority level required for payment of the costs of compliance with the summons. The agent should then initiate the necessary administrative action to have that official approve the summons prior to issuance.

(2) Officials considering approval of issuance of a third party summons will take into account the anticipated payable costs of compliance as well as the need for the information sought.

(3) The agent serving the summons on a third party will ensure that Form 2039-B, Notice to Third Party Recipient of IRS Summons, accompanies the summons. Form 2039-B is Part B of the five-part snapset assembly of Form 2039, Summons.

(4) Upon full or satisfactory compliance with a summons, the agent before whom the third party was summoned to appear shall notify the third party that an itemized bill or invoice may be submitted for payment and shall furnish his or her office address for that purpose.

(5) A third party invoice resulting from compliance with a summons and which amount is \$25 or less may be paid in cash directly by the issuing employee. This \$25 threshold does not include amounts which are claimed separately as witness fees and mileage.

(6) If the summoned third party submits a bill combining search, reproduction and transportation charges with the witness fee, and the total exceeds \$25, the direct payment procedures do not apply.

(7) In valid direct payment cases, the agent may claim reimbursement on his/her travel voucher (with the third party invoice attached) under "Miscellaneous Expenses," or may submit the receipted bill to the Small Purchases Imprest Fund Cashier for cash reimbursement. Under either procedure, the expense shall be charged to SOC 2509, Administrative Summons Expense. Amounts for Administrative Summons expenses claimed on an agent's travel voucher under Miscellaneous Expenses

are not to be charged to SOC 2109, Other Reimbursable Travel Expenses.

(8) Bills for more than \$25, or \$25 or lesser amounts when direct payment procedures will not be used, must be certified and forwarded to the appropriate Fiscal Management office for payment.

(a) The agent receiving the bill for payment should, to the extent that it is practicable for the agent to do so, ensure that the bill does itemize the specific details of search, reproduction and transportation costs as applicable and that charges have been computed at rates which appear to be appropriate and which are not higher than the allowable rates. For allowable rates see Form 2039-B, Notice to Third Party Recipient of IRS Summons, Part B of the five-part snapset assembly of Form 2039, Summons). The agent will next take necessary action to forward the bill through line managers to the official who initially approved the obligation, or the official with obligation authority appropriate to the amount of the bill.

(b) The obligating official, in most instances, the Criminal Investigation Group Manager, will receive the bill, evaluate the charges in terms of accuracy and reasonableness, and certify the bill for payment processing by signing the following statement: "Payment is approved and is within my delegated obligational authority." The approving official will record, along with certification, title and organizational identification. This constitutes that official's verification that the summons has been satisfactorily complied with and that the claim against the Service for reimbursement is valid.

(c) The certified bill will then be forwarded through appropriate channels to the regional Fiscal Management office for payment processing.

(9) A special procedure applies when the summonses are inter-regional or inter-district.

(a) In cases where one district requests a summons to be served by an agent of another district, the official of the initiating or requesting district with authority to obligate at the estimated payment level of the collateral summons, will

obligate funds for the payment of that summons. The requesting district will forward to the serving district a completed Form 2039, Summons, with all information provided except for the time and place for appearance and the agent before whom the witness is to appear. The transmittal letter accompanying the summons should indicate the level of obligation authority the approving official has.

(b) If the official of the receiving district determines prior to third party compliance with the summons that the anticipated costs will exceed the obligational amount for which the approving official has authority, he/she will advise the requesting district of the need for the approval of an official with higher obligational authority.

(c) When the agent of the district serving the summons in coordination with the issuing official of the requesting district determines that the summons has been satisfactorily complied with, the summoned materials will be submitted to the requesting district.

(d) The third party will then submit its bill through the serving agent to the official in the requesting district who originally authorized the summons. If the actual bill exceeds the obligational authority of the approving official, it will be that official's responsibility to obtain subsequent approval at the required level.

(e) The issuing official will review the bill for accuracy and reasonableness and then certify the bill for payment. The bill will then be forwarded to Fiscal Management for payment processing.

369.6 (1-18-80)

9781

Safeguarding of Documents

To prevent unauthorized disclosure, third party invoices and supporting documents, which result from third party summons, when not being worked on, will be provided with three protection points in accordance with IRM 1(16)41, Physical and Document Security Handbook.

36(10) (1-18-80)

9781

Enforcement of Summons

36(10).1 (1-18-80)

9781

Appearance, Compliance or Noncompliance with a Summons

(1) In connection with all summonses other than those with which compliance has been stayed or waived, if advance information is received from the summoned witness or from the witness' representative that on the date set for appearance in the summons the witness will not comply with the summons either by not testifying or not producing records, or both, no indication or agreement, express or implied, shall be made on behalf of the Service that it is not necessary or required for the witness to appear and testify or produce summoned records on the date set for appearance. The witness or the witness' representative should be informed that the witness must appear in person with the records to be produced pursuant to the summons and either comply or refuse to comply with the summons, stating reasons for any such refusal. The witness or the witness' representative should also be informed that in the event of refusal or failure to comply with the summons, consideration will be given to resorting to the judicial remedies provided by law. The representative of the witness cannot appear in lieu of the witness on the appearance date set in the summons. In the event the witness for a valid reason (such as illness) cannot appear on the date fixed in the summons, that date may be continued by mutual agreement to another date.

(2) If a taxpayer or witness appears in response to a summons and claims either the self-incrimination privilege of the Fifth Amendment or other privilege, the special agent should continue with the examination even though it is clear that the questions will not be answered. It is important that the special agent ask the summoned person all questions necessary to develop the required information and make requests for production of each of the documents desired so that the person asserting the privilege responds to each inquiry by either answering the question and producing the documents or asserting the claimed privilege. However, if the person summoned refuses to submit to questioning and the requests for documents, the special agent cannot compel the person to remain and continue with the examination. The special agent should not attempt to overcome a blanket claim of privilege or a refusal to submit to specific questioning. A record should be made describing the facts and

occurrences at the interview. If it is anticipated or known that the taxpayer or witness summoned intends to assert a privilege, a stenographer should be present to transcribe the interview or another IRS employee should attend the interview as a witness.

(3) The above procedures are important to the enforcement of a summons to establish the facts and circumstances of noncompliance. The procedures respecting claims of privileges are primarily applicable when only the witness and the witness' representative appear in response to the summons. There may be other situations in which the taxpayer or another person attempts to be present when a summoned third-party witness is questioned and the special agent does not desire to disclose in their presence the course of the investigation by requesting the furnishing of each item of information, oral or documentary. In such event other considerations may be involved, and the agent should consult with his superior. District Counsel may also be consulted.

36(10).2 (7-8-81)

9781

General

(1) The United States District Court for the district in which the person to whom the summons is directed resides or is found shall have jurisdiction to compel his/her attendance, testimony or the production of books, papers, records or other data, as detailed in IRC 7402(b) and 7604(a). A judge of the district court or a United States Magistrate may by appropriate process compel compliance with the summons. Civil proceedings are utilized to compel the person summoned to furnish information. Criminal enforcement serves "as a deterrent to offenses against the public" and to punish the wrongdoer.

(2) Any summons that has not been complied with within six workdays following the date set for compliance, where enforcement action is appropriate, will be referred to District Counsel for initiation of enforcement proceedings.

36(10).3 (1-18-80)

9781

Civil Enforcement of Summons**36(10).31** (7-8-81)

9781

General

(1) IRC 7604 provides for the civil enforcement of a summons. The special agent's au-

thority to enforce a summons is granted in the same delegation orders as the agent's authority to issue a summons. [See text 362.]

(2) Under IRC 7604(b), enforcement action may be initiated by applying for an attachment against a person who has failed to obey a summons. The application is made to a district judge or a United States magistrate who will hear the application and, if satisfied with the proof, will issue an attachment for an arrest. When the person is brought before him/her, the judge or magistrate will hear the case. He/she will then issue whatever order he/she deems proper, not inconsistent with the law for the punishment of contempts, to enforce compliance with the summons and to punish such person for default or disobedience. When a petition for attachment is filed the court may choose to proceed by issuing an order to show cause why the summons should not be obeyed. [Brody v. U.S.] It may also modify the summons in its order if compliance would be unreasonable or oppressive. [Brody v. U.S.] This provision is intended only to cover persons who were summoned and wholly made default or stubbornly refused to comply. [Reisman v. Caplin]

(3) Enforcement proceedings are usually commenced by filing a petition for a court order directing compliance with the summons. The summons (or a copy) should be attached to the petition or offered in evidence; otherwise, the court may not enforce it. [Commissioner v. Schwartz] Based upon the allegations, the court may issue either an order to show cause, or an ex parte (only one party represented) order directing compliance with the summons. [Falsone v. U.S.] The use of procedures other than attachment is authorized by IRC 7604(a), which grants district courts jurisdiction to enforce compliance "by appropriate process."

(4) Requests for civil enforcement of summonses originating in Criminal Investigation will be prepared by the special agent who issued the summons, and will include the following:

(a) The name, full address, and taxpayer identification number of the taxpayer under investigation;

(b) A brief resume of the pertinent facts in the case, showing particularly whether it involves or is related to the Special Enforcement Program;

(c) Exactly what the agent seeks to obtain by the summons;

(d) An explanation of the relevancy of the records sought where the relevancy is not obvious. For example, if records pertaining to years other than those under investigation are sought, the relevancy should be explained. Also, the relevancy of records pertaining to third parties should be explained;

(e) An explanation of the need or importance of such evidence to the success or completion of the investigation;

(f) A statement that IRC 7609(a) notice has been served on persons or entities identified in the description of records or, if not, why it is believed notice is not necessary;

(g) If a corporation is the party summoned, a statement whether service of the summons has been made on a responsible officer and, if not, why not;

(h) The circumstances surrounding contacts with the person summoned showing particularly the defense(s) claimed for refusing to comply with the summons and the circumstances under which the person summoned claimed the defense(s);

(i) A transcript (if recorded) of the questions propounded to the person summoned and the person's answers;

(j) The name of the cooperating IRS agent/officer or, if none, why;

(k) A description of any problems involving the imminent expiration of the statute of limitations with respect to either the criminal or the civil liability; and

(l) A statement as to the existence of any known criminal investigations, by other federal agencies, of the taxpayer and, in the case of a corporate taxpayer, corporate officers or employees.

(m) A statement as to any disclosures made pursuant to IRC 6103(i) concerning possible violations of criminal laws not within Service jurisdiction;

(n) A statement as to any other known requests for summons or subpoena enforcement against the witness or related parties; and

(o) If a pen register was used in the investigation prior to the issuance of the summons, a statement to that effect and the reason the pen register was used.

(5) The Chief, Criminal Investigation Division, if he/she approves, will so indicate by endorsement on the signature page of the requests. The original and four copies together with the original of the summons (Form 2039) will be transmitted, through the District Director or his/her designee, to District Counsel. If the matter relates to a strike force case or a case in which the Department of Justice has expressed an interest, the Chief will forward an extra copy of the special agent's request for transmission through District Counsel and Chief Counsel to the Criminal Division of the Department of Justice.

(6) With respect to a summons issued in connection with a collateral investigation, the replying district will provide to the requesting district, by memorandum, sufficient information regarding noncompliance with the summons, including information about stays of compliance, for the requesting district to prepare a request for civil enforcement of the summons. This request should be directed to and processed by the responsible office of District Counsel servicing the requesting district.

(7) Requests are approved generally by District Counsel and in certain cases by Chief Counsel. Normally, District Counsel will take final action within six workdays from the receipt of a summons case, and Chief Counsel will take final action within three workdays after receipt of a summons case.

(8) After a summons has been referred to the District Counsel for civil enforcement, he/she will be kept informed by memorandum of all situations which have a bearing on the summons enforcement proceeding. In instances where time is of the essence, the District Counsel will be immediately advised by telephone of the facts in the matter, with confirmation by memorandum to follow. Examples of the type of information which will be reported are: the evidence sought is no longer needed; the witness has voluntarily complied with the provisions of the summons; the tax liability is paid or otherwise satisfied; the principal is about to be offered a district Criminal Investigation Division conference; (See IRM 9356.1) or the special agent has submitted a report recommending prosecution of the principal. The memorandum will be prepared as soon as the information is received, with distribution made in the same number of copies and in the same manner as the original referral to Counsel. Copies of any legal documents involved in the action will be forwarded with the memorandum.

(9) Similarly, with regard to any summons referred to the Department of Justice for enforcement, District Counsel will be informed by memorandum if there is either compliance or an initial decision by a federal district court or magistrate that the summons is unenforceable. The memorandum will contain: the names of the taxpayer and witness; the appearance date set in the summons; the date of compliance or the adverse court decision; whether compliance was satisfactory; and whether compliance was pursuant to a court order. The memorandum will be prepared as soon as practicable after compliance or the adverse decision, and distributed in the same manner as the original referral to District Counsel.

(10) Similarly, District Counsel will be informed by memorandum of any ex parte orders under 6103(i) that may be sought and/or granted or head of agency requests received and/or granted after the referral of a summons for enforcement. District Counsel should also be notified if, after a request for summons enforcement, but before its granting, the summonsed information on the witness becomes the subject of a grand jury inquiry.

(11) If there is a pending summons enforcement action related to an investigation when the special agent's report recommending prosecution is forwarded to District Counsel, the memorandum transmitting the report to Counsel (See IRM 9631.2) will include a statement to that effect, with information identifying the party involved in the summons enforcement action and the Counsel office handling it.

36(10).32 (1-18-80)

9781

Civil and Criminal Contempt Regarding Summons

(1) A person refusing to obey a court order directing compliance with a summons (civil enforcement) may be held in contempt of court. The contempt proceedings may be civil [*Sauber v. Whetstone*] or criminal, [*Brody v. U.S.*; *Goldfine v. U.S.*] or both. A defendant may be purged of civil contempt by complying with the court order, but punishment for criminal contempt is usually not conditional. Use of civil or criminal contempt, as with civil or criminal enforcement, depends on whether the purpose is to compel compliance with the summons or to punish disobedience and protect the authority of the court.

(2) A civil contempt proceeding may be commenced by a motion informing the court of the failure to comply with its order and requesting that the person summoned be adjudged in contempt and punished. The recalcitrant party may then be committed to jail until such time as he/she complies with the court order. [*Sauber v. Whetstone*]

(3) A criminal contempt proceeding can be undertaken only on notice given by the judge in open court in the presence of the defendant, by an order to show cause or by an order of arrest, unless the "contempt" was committed in the presence of the court. The notice must state essential facts which constitute criminal contempt and describe the criminal contempt as such. [Rule 42, F.R.C.P.]

(4) In a criminal contempt case, the Government must prove beyond a reasonable doubt that the defendant willfully failed to comply with a lawful court order. To sustain this burden it must show that summoned records are presently within the defendant's power and control [*U.S. v. Patterson*; *U.S. v. Pollock*] Presumption of continued possession and existence is not enough to shift the burden of proof to the defendant unless the time span is short and there is no outside motivation for destruction of the particular records. [*U.S. v. Goldstein*; *U.S. v. Pollock*]

36(10).33 (10-6-81)

9781

Use of Declarations in Summons Proceedings

(1) To support applications for court orders directing compliance with a summons, the agent will prepare a declaration (Exhibit 300-15 contains a sample) reciting detailed information concerning the nature and purposes of the examination, the testimony and records desired, and their relevancy to the examination. Usually, enforcement proceedings are held solely upon declarations (of the agents and possibly the person summoned) and oral argument. Accordingly, it is highly important that the declaration clearly show that the person summoned has possession, care, or custody of the desired records, and that they are material and relevant to the tax liability of the person being investigated. (*Local 174 v. U.S.*) If the summons pertains to a year previously examined, a copy of the District Director's reopening letter should be attached. Some courts may require that an affidavit, rather

than a declaration, be filed. It will contain the same basic information, however, it must be given under oath.

(2) If there is a sharp dispute on the basic question of whether the records are subject to the control of the person served with the summons, the court will usually not resolve the matter on the basis of conflicting declarations, but will have the issue of control and willfulness in failing to comply with the order determined in a contempt proceeding. (In re: Harry J. Reicher.) When a petition for attachment is filed the court may choose to proceed by issuing an order to show cause why the summons should not be obeyed (*Brody v. U.S.*) It may also modify the summons in its order if compliance would be unreasonable or oppressive. (*Brody v. U.S.*) This provision is intended only to cover persons who were summoned and wholly made default or stubbornly refused to comply. (*Reisman v. Caplin*)

36(10).4 (1-18-80)

9781

Criminal Enforcement of Summons

(1) If the facts and circumstances warrant penal action, a person who neglects to appear or to produce records pursuant to a summons may be criminally prosecuted under IRC 7210. [Handbook text 221.9] The Government must be able to prove that:

(a) The defendant was duly summoned to appear to testify, or to appear and produce certain records.

(b) He/she did not appear or produce such records.

(c) At least some of the records called for by summons were in existence and in his/her control, and

(d) He/she wilfully and knowingly neglected to appear and produce them.

(2) It has been held that the word "neglect" as used in this Code section means more than mere inadvertence—"To make a criminal offense to neglect in this situation would imply that he must have wilfully failed to comply with the summons with knowledge that a reasonable man should have had that he was failing to do what the summons required him to do." [*U.S. v. Becker*]

(3) Refusal to obey a summons could lead to a prosecution under IRC 7203, for wilful failure to supply information required by the law. [Handbook text 221.4] In such a proceeding, proof that the refusal was intentional and without legal justification is not sufficient. The Government must also establish that the refusal was prompted by bad faith or evil intent; that the defendant did not believe in good faith that refusal was legally justified. [*U.S. v. Murdock*]

370 (1-18-80)

9781

Automatic Data Processing (A.D.P.), Scientific Aids And Other Special Equipment

371 (1-18-80)

9781

A.D.P.

371.1 (1-18-80)

9781

Application

(1) Generally, applications involve the Automatic Data Processing (ADP) tasks of converting source documents into machine sensible forms (keypunch cards, magnetic tape, etc.) to accomplish efficient analysis. This effort is frequently accomplished by indexing or abstracting through sorting, merging, matching or computation of data elements (subparts of a computer record). Outputs are principally in the form of printouts. In addition, applications may involve the analysis, computations and/or retrieval of selected data from machine-sensible files.

(2) By example, the following applications are representative:

(a) Summarization of payments made (or received) by party, dates, periods, types, or amounts, etc. based on some source document; e.g., agency payment logs, corporate disbursements records, physician's daily patient book, municipal warrant ledgers, vouchers, memorandums, W-2s, etc.

(b) Indexing by name, date, address, amount, type, telephone number, or identification number (predetermined or substituted), etc., a significant volume of documents in order to bring together similarities, identify inconsistencies, or develop patterns, etc. that can be easily referenced for later retrieval of either the information or the evidentiary documentation itself.

(c) Merging, matching and sorting of several kinds of information; e.g., checks, receipts, bills of lading, realty records, or mortuary records, etc., into one or more useful listing disclosing items; e.g., name, date, amount, or matches ("hits") of related information in some useful sequence.

(3) Field personnel will identify and explore the possibilities of utilizing ADP to expedite or reduce the cost of investigations, examinations or special projects. Assistance and development of ADP applications is available through Computer Criminal Investigation Specialists, Chiefs, Criminal Investigation Staff, designated regional coordinators and National Office personnel within the Management Information and Services Branch (CP:CI:M).

(4) A completed ADP project request will be approved by the Chief, Criminal Investigation Division and the District Director and forwarded to the ARC (Criminal Investigation). The request should include the project title, brief description of the project, related projects, purpose, description of input (attach copy of input document or tape file layout) and volumes involved, required output (tables, lists, tape file, etc.), required completion schedule, estimated cost if project were handled manually at the district office, and estimated benefit (tangible and/or intangible).

(5) Joint case applications will be controlled through the Criminal Investigation function.

(6) For more details see IRM 938(10).

371.2 (1-18-80)

9781

TELAN

(1) Telephone Analysis System (TELAN) is a function of the Treasury Enforcement Communications System (TECS) and is a computerized service provided by Customs to its own personnel and to DEA, BATF and IRS investigators for the purpose of analyzing telephone toll data. Requests for the use of TELAN should be forwarded by the Chief, Criminal Investigation Division through normal channels to the Director, Criminal Investigation Division, Attn.: CP:CI:O. The request should include the telephone toll information which is to be analyzed by the computer. The computer will generate a printout, listing the data in three sequences: primary phone number, date, receiving phone number; receiving phone number; date, primary phone number; and date, primary phone number, receiving phone number. The computer will also generate a listing, if applicable of those phone numbers submitted by the Service which have also been submitted by another agency. The listing will indicate the name of the other agency and the case number.

(2) For details concerning TECS, See Handbook text 335.

372 (1-18-80)

9781

Scientific Aids

MT 9781-32

372

IR Manual

372.1 (1-18-80) 9781
Laboratories

See 356.7 regarding the Midwest Region Questioned Document Laboratory.

372.2 (1-18-80) 9781
Chemicals**372.21** (1-18-80) 9781
Anthracene

This substance may be obtained in either powder or pencil form from laboratories, drug firms, and chemical houses. It is invisible but gives off a brilliant fluorescence when exposed to ultraviolet light. Identifying marks, initials, dates, etc., can thus be placed on documents, clothes, vehicles, and other objects that a special agent might want to identify later in book-making or lottery headquarters.

372.22 (1-18-80) 9781
Phenolphthalein

This substance is an almost colorless powder that will turn red in the presence of an alkali or alkaline solution. It is used to determine whether a person has entered a room, picked up an object, opened a parcel, etc. The method employed in its use is to sprinkle a small quantity on a doorknob, package, or other object. Any person touching the object will unknowingly get the powder on his/her hands. Later when he/she washes his/her hands with soap or ammonia the powder will go into solution, turning his/her hands red. Phenolphthalein can be obtained from any drug store.

373 (1-18-80) 9781
Special Equipment**373.1** (1-18-80) 9781
Proper Use and Limitations on Special Equipment

Special agents must refer to and abide by the restrictions and prohibitions relative to investigative and sensitive equipment contained in Policy Statement P-9-35 and any implementing Internal Revenue Manual issuances.

373.2 (1-18-80) 9781
Definitions

(1) The types of technical equipment used by the Criminal Investigation Division are defined as follows:

(a) Document Equipment—Those items of equipment peculiar to and utilized primarily by

the Criminal Investigation Division in assisting in the investigation of financial crimes. This classification includes microfilm, portable copying, standard format cameras and portable tape recorders (both reel and standard size cassette) and transcription accessories for these.

(b) Investigative Equipment—Items of equipment specially acquired for and used by the Criminal Investigation Division for carrying out investigative and enforcement functions. This equipment includes surveillance trucks, binoculars and optical equipment, surveillance cameras, firearms and ordnance, electronic surveillance equipment, radio communication equipment, night vision equipment, red lights, sirens, and other enforcement equipment intended for use in surveillance situations. The above definitions do not include equipment normally procured for general office or administrative use such as office furniture and office machines (typewriters, calculators, dictation systems used in centralized operations, etc.).

(c) Sensitive-type Equipment—Any equipment which, in a broad sense, can be used in the interception of telephone communications or non-telephone conversations. This includes any type of relay, transmitter, or microphone for use with a telephone; miniature transmitters; concealed radio transmitters disguised as ordinary objects; wireless and parabolic microphones; and amplified microphones. Pen registers and other similar equipment used to identify telephones called are considered to be sensitive equipment.

(d) Accessories and Supplies—Items of little monetary value (\$150 or less) chargeable to contingent funds which are specifically acquired for and used by the Criminal Investigation Division in carrying out investigative and enforcement functions.

373.3 (1-18-80) 9781
Document Equipment**373.31** (1-18-80) 9781
Microfilm Equipment and Photocopying

Microfilm and photocopying equipment is available at each District Office and obtained through the Chief, Criminal Investigation Division. The use of microfilm equipment is a fast, efficient manner of obtaining copies of documentary evidence required in tax investiga-

tions. Considerable special agent time can be saved by the use of this equipment. In situations where only a limited quantity of documents need to be copied, it may be more practical to use photocopying or camera equipment. Some special microfilm equipment is available in selected locations for special purpose application. These include High Speed Microfilm cameras which photograph both sides of the document simultaneously and planetary microfilm cameras. Requests for use of this equipment should be made through your immediate supervisor.

373.4 (1-18-80) 9781 **Investigative Equipment**

373.41 (1-18-80) 9781 **Radios**

(1) Certain Criminal Investigation Divisions investigations require the special agent to maintain surveillances of individuals and localities in order to develop evidence of income and excise tax violations. Under certain circumstances taxpayers under investigation for income or excise tax violations will be placed under surveillance when it is suspected that they are attempting to leave the country prior to indictment, or to dispose of or conceal liquid assets.

(2) Mobile and/or portable two-way radios are essential to surveillance involving the use of vehicles. The special agent should use coded signals or words whenever possible in radio transmitting and should talk "in the clear" only when absolutely necessary. Due to the common use of programmable scanners, a special agent should always assume that someone is listening to his radio conversations. If specific identifying information must be transmitted, a code system should be used. The National Office maintains a supply of code matrix sheets which can be provided upon request. Codes are not easy to use and slow the speed of communication. They also require practice for proficiency. The code matrix system works best when one agent is observing and another is encoding, decoding and transmitting on the radio.

(3) Most district offices have an adequate inventory of radio equipment. Normally the special agent should be able to operate this equipment. If not, another special agent or other officer of the Internal Revenue Service experi-

enced in the use of radio equipment may be assigned to instruct or work with him/her.

(4) Certain types of highly specialized radio equipment are available for use by special agents when authorized in specific investigations. This equipment may be obtained through the Director, Criminal Investigation Division. Prior approval of the Chief, Criminal Investigation Division, should be obtained before requesting or using this equipment.

373.42 (1-18-80) 9781 **Binoculars and Telescopes**

The value of binoculars and telescopes in surveillances is self-evident. However, the special agent should exercise care while using them. Binoculars and telescopes may be obtained from the Chief, Criminal Investigation Division.

373.43 (1-18-80) 9781 **Camera Equipment**

A wide variety of camera equipment, capable of performing many specialized and required tasks is available at each district office and obtained through the Chief, Criminal Investigation Division. This equipment includes 35mm single lens reflex cameras with a wide variety of telephoto and accessory equipment; movie cameras; instant load cameras; cameras with self-developing film; and specialized surveillance cameras. Photographs of defendants, witnesses, residences, automobiles, etc., have often proven valuable in tax cases, especially in Special Enforcement Program investigations.

373.44 (1-18-80) 9781 **Handcuffs**

Handcuffs are available to special agents for use in securing persons arrested. Care and discretion must be exercised in their use.

373.45 (1-18-80) 9781 **Specialized Investigative Equipment**

Specialized investigative equipment is available through the Assistant Regional Commissioner (Criminal Investigation). This equipment includes surveillance trucks, night vision equipment, TV video cameras and recorders, specialized camera equipment, etc. This equipment is valuable as surveillance aides in Special Enforcement Program investigations.

373.46 (1-18-80)
**Sirens, Warning Lights, and
Special Automotive Equipment**

9781

Use of sirens and warning lights pose a potential danger to the public; consequently, they should be used only when absolutely necessary. (See Policy Statement P-9-38). In some instances special equipment such as locked hoods and lock-type gasoline filler caps should be installed, since violators have, on occasions, sabotaged Government vehicles by putting emery dust, sugar, and similar substances in the crankcase or gasoline tank. However, special agents must have the prior approval of the Chief, Criminal Investigation Division, or of the Assistant Regional Commissioner (Criminal Investigation) before obtaining this equipment.

373.47 (1-18-80)
**Security of Investigative/
Document Equipment and Other
Property**

9781

(1) Special agents are responsible for taking adequate precautions to safeguard Criminal Investigation Division investigative/document equipment, as well as other items of Service-owned personal property with which they are entrusted. Chapter 500 of IRM 1(16)41, Physical and Document Security Handbook, contains instructions for safeguarding property of the type frequently utilized by special agents in the course of their duties.

(2) Investigative/document equipment as well as other types of Service-owned personal property, with the exception of permanently installed equipment, i.e., mobile radios, vehicle chargers, amplifiers, red lights and sirens, should generally never be left in an unoccupied automobile. However, under unusual circumstances and if absolutely necessary, these items may be stored for short periods of time in the locked trunk of an automobile provided the doors are also locked. Under no circumstances will equipment be left in an automobile overnight.

373.48 (1-18-80)
Firearms and Ammunition

9781

373.481 (1-18-80)
Authority to Carry

9781

(1) There is no specific statutory authority for special agents to carry firearms. The General Counsel, Department of the Treasury, has concluded that no specific authority is necessary

because "where a Federal Officer has authority to make an arrest, he/she has implied authority to carry firearms." Authority for special agents to make arrests is contained in 26 USC 7608(b).

(2) The authority to carry firearms is limited to the conduct of official duties in enforcing any of the criminal provisions of the Internal Revenue laws or other criminal provisions of laws relating to Internal Revenue where the enforcement is the responsibility of the Secretary or his delegate.

373.482 (1-18-80)
**Issuance of Firearms to Special
Agents**

9781

(1) Permission to carry firearms will normally be at the discretion of the special agent's immediate supervisor. The supervisor may authorize special agents to carry firearms both during duty hours and off duty hours, if in the authorizing official's judgement a bona-fide need for firearms exists, related to the performance of official duties.

(2) Before granting permission, the immediate supervisor must be assured each special agent is clearly familiar with the Treasury policy and guidelines for weapons use and has qualified within the past six months. Each agent should be provided with a copy of these Manual provisions and periodically consulted to see they have the most recent issuance.

(3) Firearms may be taken home overnight or during a weekend when the special agent finishes his/her workday which requires the carrying of firearms, or when such firearms will be required for the next work day assignments.

(4) Qualification to carry or use privately owned weapons during off-duty hours is done as a private citizen subject to local, civil and criminal restrictions. Special agents may not use their position or credentials to qualify under state or local laws to purchase, license, carry, or use private weapons; however, credentials may be displayed as occupational identification, upon request, but not to influence the decision.

(5) Special agents will not be allowed to carry a firearm unless they have qualified with that firearm in the past six months. (See IRM 9768.3). All special agents must have their badge and pocket commission on their person, when carrying a firearm, except under unusual circumstances relating to special assignments

MT 9781-1

373.482

IR Manual

approved by the Assistant Regional Commissioner (Criminal Investigation).

373.483 (1-18-80)
Firearms Standards

9781

(1) No weapons or ammunition other than that furnished by the Service except as provided in IRM 9756.2:(7) will be carried by any special agent on official business. All handguns furnished for regular assignment to personnel will be American made .38 special caliber revolver type.

(2) Service-issued guns may be modified upon approval of the ARC (Criminal Investigation). Such modifications must be made by qualified personnel or a gunsmith. Installation of grips, and grip adapters are not considered to be modifications to weapons.

(3) Trigger shoes are prohibited on all official weapons.

(4) Criminal Investigation guns must have a minimum of three pound pressure trigger pull.

(5) The .38 special caliber revolver (all steel) with two-inch barrel will be assigned to each special agent at the district office. Firearms may be assigned, one to each special agent, on a permanent basis or they may be retained in a pool in the district or local office and withdrawn as needed. If the weapons are retained in a pool, each special agent should be issued, to the extent possible, the same gun each time to ensure better proficiency in handling the weapon.

(6) The .38 special caliber revolver (all steel) with two-inch barrel will be assigned on a ratio of one for each two special agents or technical personnel at regional offices and the National Office.

(7) The .38 special caliber revolver with four-inch barrel will be assigned, as needed, for special assignments where greater accuracy and reliability may be compelling factors for target practice, training and for competition.

(8) The .38 special caliber revolver with six-inch barrel will be assigned, as needed, for training and competition purposes.

(9) The .22 caliber revolver on a .38 special caliber frame will be assigned, as needed, for training purposes.

(10) Under unusual circumstances relating to special assignments, the ARC (Criminal Investigation) may authorize the use of a Service-owned weapon of any type on a specific assign-

ment basis. The Director may authorize the use of a Treasury-owned weapon of any type for a specific assignment (See IRM 9756.4:(6)).

(11) Holsters of any standard type will be furnished on a basis of one holster for each revolver. The type of holster must be approved by the ARC (Criminal Investigation), except when purchased as accessory equipment for revolvers by the National Office.

(12) Any firearm which does not meet the prescribed standards shall be forwarded to the district Facilities Management Branch for adjustment or repair.

(13) The Chief, Criminal Investigation Division, shall make provision to ensure that each weapon is in perfect operating condition immediately preceding its issuance and annual inspections thereafter.

(14) Each special agent will be responsible for the weapon in his/her possession and will keep the gun clean and in perfect operating condition at all times.

(15) When a firearm is found to be defective, it will be forwarded immediately to the district Facilities Management Branch for repair.

(16) In accordance with IRM 1(14)49 Personal Property Management Handbook Exhibit 400-1, any acquisition of a firearm must be requested through channels to the Director, Criminal Investigation Division, Attn: CP:CI:M for approval.

373.484 (1-18-80)
Ammunition Standards

9781

(1) All Service-furnished ammunition for qualification and Service use will be new and American made. The exclusive use of new ammunition by criminal enforcement personnel has been selected because of quality control.

(2) Experiences of operating personnel indicate that reload ammunition create safety and security hazards, especially if used in line of duty, and may cause accelerated weapon deterioration.

(3) The standard service ammunition for Criminal Investigation will be the .38 special caliber, 110 grain jacketed hollow point available commercially with a copper units of pressure rating (cup) not to exceed 20,000 cup. Law enforcement ammunition with a designation of "+P+" or "+ + P" should not be used in small frame service owned weapon (i.e., Smith and Wesson Chief, Colt Detective Special, etc.).

approved by the Assistant Regional Commissioner (Criminal Investigation).

373.483 (1-18-80)
Firearms Standards

9781

(1) No weapons or ammunition other than that furnished by the Service except as provided in IRM 9756.2:(7) will be carried by any special agent on official business. All handguns furnished for regular assignment to personnel will be American made .38 special caliber revolver type.

(2) Service-issued guns may be modified upon approval of the ARC (Criminal Investigation). Such modifications must be made by qualified personnel or a gunsmith. Installation of grips, and grip adapters are not considered to be modifications to weapons.

(3) Trigger shoes are prohibited on all official weapons.

(4) Criminal Investigation guns must have a minimum of three pound pressure trigger pull.

(5) The .38 special caliber revolver (all steel) with two-inch barrel will be assigned to each special agent at the district office. Firearms may be assigned, one to each special agent, on a permanent basis or they may be retained in a pool in the district or local office and withdrawn as needed. If the weapons are retained in a pool, each special agent should be issued, to the extent possible, the same gun each time to ensure better proficiency in handling the weapon.

(6) The .38 special caliber revolver (all steel) with two-inch barrel will be assigned on a ratio of one for each two special agents or technical personnel at regional offices and the National Office.

(7) The .38 special caliber revolver with four-inch barrel will be assigned, as needed, for special assignments where greater accuracy and reliability may be compelling factors for target practice, training and for competition.

(8) The .38 special caliber revolver with six-inch barrel will be assigned, as needed, for training and competition purposes.

(9) The .22 caliber revolver on a .38 special caliber frame will be assigned, as needed, for training purposes.

(10) Under unusual circumstances relating to special assignments, the ARC (Criminal Investigation) may authorize the use of a Service-owned weapon of any type on a specific assign-

ment basis. The Director may authorize the use of a Treasury-owned weapon of any type for a specific assignment (See IRM 9756.4:(6)).

(11) Holsters of any standard type will be furnished on a basis of one holster for each revolver. The type of holster must be approved by the ARC (Criminal Investigation), except when purchased as accessory equipment for revolvers by the National Office.

(12) Any firearm which does not meet the prescribed standards shall be forwarded to the district Facilities Management Branch for adjustment or repair.

(13) The Chief, Criminal Investigation Division, shall make provision to ensure that each weapon is in perfect operating condition immediately preceding its issuance and annual inspections thereafter.

(14) Each special agent will be responsible for the weapon in his/her possession and will keep the gun clean and in perfect operating condition at all times.

(15) When a firearm is found to be defective, it will be forwarded immediately to the district Facilities Management Branch for repair.

(16) In accordance with IRM 1(14)49 Personal Property Management Handbook Exhibit 400-1, any acquisition of a firearm must be requested through channels to the Director, Criminal Investigation Division, Attn: CP:CI:M for approval.

373.484 (1-18-80)
Ammunition Standards

9781

(1) All Service-furnished ammunition for qualification and Service use will be new and American made. The exclusive use of new ammunition by criminal enforcement personnel has been selected because of quality control.

(2) Experiences of operating personnel indicate that reload ammunition create safety and security hazards, especially if used in line of duty, and may cause accelerated weapon deterioration.

(3) The standard service ammunition for Criminal Investigation will be the .38 special caliber, 110 grain jacketed hollow point available commercially with a copper units of pressure rating (cup) not to exceed 20,000 cup. Law enforcement ammunition with a designation of "+P+" or "+ +P" should not be used in small frame service owned weapon (i.e., Smith and Wesson Chief, Colt Detective Special, etc.).

(4) The .38 special caliber midrange or wad-cutter, 148 grain, lead or lubaloy coated ammunition may be utilized for firearms competition, training, qualification, and requalification purposes.

(5) If the standard service ammunition (110 grain) is not utilized for training, qualification or requalification purposes, personnel should fire 30 rounds of this ammunition for familiarization purposes at each qualification and requalification.

(6) The .22 caliber long rifle pistol match target ammunition (40 grain) may be used for firearms training.

(7) The above ammunition standards and restrictions will not apply when in the judgment of the ARC (Criminal Investigation) the use of different ammunition is necessary or desirable such as in special assignments or situations.

(8) Special agents on dignitary protection under the direction of Secret Service are permitted to utilize ammunition provided them by the Secret Service, however, the Secret Service utilizes only ammunition with a CUP rating of "+P+" or "+ +P". Special Agents are cautioned not to use this ammunition in small frame weapons (i.e. Smith and Wesson Chief, Colt Detective Special) and to have a larger frame weapon made available to them for these assignments (i.e. Smith and Wesson Model 15, Colt Lawman, etc.)

373.485 (1-18-80)

9781

Use of Firearms by Special Agents

(1) Firearms Policy

(a) A firearm may be discharged only as a last resort when in the considered opinion of the officer there is danger of loss of life or serious bodily injury to himself or to another person.

(b) Firing a weapon should be with the intent of rendering the person at whom the weapon is discharged incapable of continuing the activity prompting the agent to shoot.

(c) Warning shots pose a hazard to innocent parties. They should be fired only when the expected effect is to minimize substantially the necessity of firing directly at a person, AND there is negligible danger of injury to an innocent party.

(d) Firing at a moving vehicle with the intent of rendering it incapable of being operated poses a formidable danger to innocent parties. The possibility of a ricochet is greatly increased when the target is a car body or a spinning tire. Utmost caution must be exercised when considering such action.

(e) Firing at a fleeing person will not be considered justified unless the officer has reasonable cause to believe that the person he/

she is considering shooting poses a threat to the life of the officer or others.

(f) As a general rule when in the presence of the public, a handgun should be drawn only when the special agent or his/her superiors have sufficient cause to expect it will be used and the officer is preparing for its use.

(g) When making arrests or searches and seizure, only reasonable and necessary force may be used by the special agent. The special agent should allow the escape of a subject rather than risk inflicting bodily harm by shooting at the subject as stated in P-9-37.

(2) When a handgun is being carried in the conduct of official business, it will be inconspicuously carried upon the person of the agent so as to be away from public view. However, a special agent may display a firearm while in the performance of official business, if the agent feels that by doing so, it will relieve a threat against the agent or another person.

(3) If, while carrying a firearm on official duty, a special agent observes a Federal crime being committed, he/she is expected to respond, depending on the circumstances involved. Ordinarily, the special agent should notify the appropriate Federal or local authority. In life/death situations or incidents in which he/she is inextricably involved, the special agent should respond as a Federal law enforcement officer.

(4) A special agent is also authorized to appropriately respond should a non-Federal crime involving danger of loss of life or serious bodily injury be committed in his/her presence, or where he/she reasonably believes such a crime has occurred; however, the special agent should understand that in non-Federal crime situations, his/her authority is that of a private citizen and the rules of "citizens arrest" apply. If circumstances allow, local authorities should be notified rather than becoming involved. If not, good judgement must prevail in the course of action taken.

(5) In all circumstances involving the use of a firearm to halt a crime involving danger of loss of life or serious bodily injury to themselves or to another person, special agents are to use the Treasury Department guidelines set forth above. They will be followed regardless of the fact that state or local law may be more liberal in allowing their law enforcement officers to use firearms.

(6) Whenever a firearm is discharged by a special agent while in the performance of official duty (except official target practice), the special agent will submit a full explanation of the reasons for such action in a memorandum which will be forwarded through official channels, to the Director, Criminal Investigation Division (CP:CI:M).

373.486 (3-12-82)

9781

Carrying Firearms and Armed Escorts on Commercial Airplanes

(1) Federal Aviation Administration Regulations, Sections 108.11 and 108.21 of 14 CFR 108, Airplane Operator Security, provides information and guidance concerning the carriage of weapons and the carriage of passengers under the control of armed law enforcement escort(s). This material is summarized in Federal Aviation Administration (FAA) Advisory Circular 108-2 dated Oct. 16, 1981. These Regulations apply to carriage of weapons and escort of individuals on scheduled passenger and/or charter operations. This definition includes air commuter operations, air taxis and other similar type of air service available to the public.

(2) Carriage of weapons by special agents aboard aircraft should be limited to those instances where the special agent needs the weapon accessible in the performance of official duty during the period from the time it would otherwise be placed in checked baggage until such time as it would have been returned after deplaning.

(3) When a special agent is acting in the capacity of armed escort or other type assignment which requires carrying a weapon on-board commercial aircraft, appropriate airline officials should be notified at least one hour in advance, or in case of emergency as soon as possible, before departure. Special agents will then be guided by instructions from the airline official as to what procedure(s) should be followed.

(4) As a general rule, armed federal law enforcement officers will be in one of the following categories when on travel status:

- a) Armed individual traveling alone (occasionally without baggage);
- b) Armed, transporting a non-dangerous prisoner;
- c) Armed, transporting a dangerous prisoner;
- d) Armed escort accompanying a dignitary;
- e) Armed, conducting a surveillance on suspect.
- f) Armed escort for protection of a witness or information

(5) Your carriage of a weapon and your identity will be made known to airline personnel who need this knowledge.

(6) In the event of a disturbance aboard the aircraft you are not to take any action unless it is specifically requested by the flight captain.

(7) Armed special agents will not consume alcoholic beverages prior to, or during flight.

(8) Instructions pertaining to armed escort of prisoners, are as follows:

(a) The air carrier must be notified at least one hour before departure, or in an emergency, as soon as practicable of the identity of the passenger to be carried and the flight on which it is proposed to carry the passenger.

(b) Whether the passenger is considered to be in a maximum risk category (dangerous) or not.

(c) If the passenger is considered to be in a maximum risk category, the passenger must be under the control of at least two armed special agents.

(d) No more than one passenger in a maximum risk category can be carried on the airplane.

(e) If the passenger is considered to be not in a maximum risk category, the passenger should be under the control of at least one special agent. No more than two of these persons may be carried under the control of any one special agent.

(9) The air carrier should be assured by the special agent, prior to departure, that:

(a) The special agent is equipped with adequate restraining devices to be used in the event restraint of any passenger under control of the special agent becomes necessary. Some aircraft operators do not permit restraining devices to be used while in flight due to perceived safety/liability concerns that might arise in the event of an incident or an accident. The special agent and the aircraft operator should have a clear understanding of this issue prior to initiation of the intended travel.

(b) Each passenger under the control of the special agent has been searched and does not have on or about their person or property anything that could be used as a deadly or dangerous weapon.

(c) Each passenger under the control of the special agent should be boarded before any other passengers at the airport where the flight originates and deplane at the destination after all other passengers have departed.

(d) The special agent and passenger should be seated in the rear most passenger seat when boarding. This seat should be located away from any lounge area and not directly across from any exit. At least one escort should sit between the person in custody and any aisle.

(e) The passenger cannot consume any alcoholic beverages while on board the airplane.

(f) Each special agent, at all times, shall accompany the passenger under their control and keep the passenger under surveillance while aboard the airplane.

373.486

MT 9781-31

(g) This material does not apply to the carriage of passengers under voluntary protective escort.

(10) The following procedures will be utilized in the carriage of firearms and ammunition in checked luggage:

(a) The weapon must be unloaded.

(b) The carrier must be notified prior to checking baggage that a firearm is in checked baggage and that it is unloaded. If requested, the special agent will submit a written declaration that the firearm is stored as specified. It is likely that the carrier will have a preprinted form for this declaration.

(c) The baggage must be locked and the agent in possession of the key or combination. The special agent's name and address should be included inside the baggage. Checked baggage containing weapons will not be carried in the flight crew compartment or any area accessible to passengers.

(d) Small arms ammunition must be packed in pasteboard, or other inside boxes, or in partitions designed to fit snugly into outside wooden, fiberglass, or metal containers, or must be packed in metal ammunition clips. The packaging must be designed to protect the primers from accidental discharge.

(e) Special agents will not carry chemical weapons aboard any aircraft (See IRM 9756.9:(7).

373.487 (1-18-80)

9781

Security of Firearms and Ammunition

(1) Due to the dangerous nature of firearms and the potential for accidental injury and damage, the minimum guidelines for storing Government owned firearms and ammunition as contained in 436 of IRM 1(16)41. Physical and Document Security Handbook should be followed.

(2) Provision shall be made by the Chief, Criminal Investigation Division, for at least one safety inspection each year of all Government-owned firearms assigned to the Chief's office. The inspection may be performed by any person competent in the inspection of firearms, including local range officers, gunsmiths, or special agents who have an expert knowledge of firearms.

(3) If it is necessary to store weapons at home, they should be kept under lock and key. Ammunition should be kept locked in a separate location from the weapon. Special agents may wish to insert a padlock through the open cylinder, thereby rendering the revolver harmless.

(4) Firearms and ammunition should never be left in an automobile, even though the auto-

mobile is locked. However, if absolutely necessary, these items may be stored for short periods of time in the locked trunk of an automobile, providing the doors are also locked. Weapons will not be left locked in an automobile overnight.

(5) Never handle or point any firearm without first opening the weapon to make absolutely certain it is not loaded.

(6) At the range, do not load or cock your weapon unless you are at the firing line and facing the target. Do not turn around at the firing line with a loaded revolver in your hand without first breaking open the cylinder. Always examine the bore of a weapon before loading it to see that it is free from obstructions.

(7) Never leave an unattended firearm loaded.

373.488 (1-18-80)

9781

Chemical Weapons

(1) Chemical weapons may be carried by Criminal Investigation Division personnel when engaged in enforcement activities of such a nature that prudence indicates need for them may arise (i.e., riots, rebellions, arrests, attacks on people or property).

(2) The Director, the Assistant Regional Commissioners and the Chiefs, Criminal Investigation Division or their designees, may authorize special agents in their respective offices (includes posts of duty under the Chief) to carry chemical weapons if in his/her judgment a bona fide need exists, related to the performance of official duties.

(3) The Director, the Assistant Regional Commissioners and the Chiefs, Criminal Investigation Division, or their designees shall ensure that each special agent whose duty requires the handling or use of a chemical weapon thoroughly understands its use and effects, including the proper first-aid treatment for persons affected by its use. Instruction involving the use of and first aid in the treatment of chemical irritants may be incorporated into the firearms refresher training program thereby utilizing the firearms coach concept.

(4) Chemical weapons may be used only when milder forms of persuasion are ineffective and deadly force is not justified. Aerosol-propelled tear gas must be treated as another dangerous weapon, using safety precautions similar to those used with firearms.

(5) Every effort must be made to direct the spray at a person's chest for the minimum time required to incapacitate and at a distance of at least two feet.

(6) It is a misuse of the chemical weapon to deliberately discharge it directly into the face of an incapacitated person or to discharge quantities in excess of the equivalent of five, one-second bursts, or to discharge large quantities of the spray in a confined place such as a small room or a closed automobile.

(7) Special agents will not carry chemical weapons aboard an aircraft. This restriction also covers the placing of these items in checked baggage, inasmuch as the baggage compartment is part of the air circulation system of the aircraft.

(8) Whenever a chemical weapon is discharged by a special agent while in the performance of official duty (except official training or to accomplish disposal at end of shelf life), the special agent will submit a full explanation of the reasons for such action in a memorandum which will be forwarded through official channels to the Director, Criminal Investigation Division, Attention: CP:CI:M. The memorandum should include, where possible, the identity of the person afflicted by the tear gas and any first-aid measures subsequently applied.

373.489 (1-18-80)

9781

Security of Chemical Weapons

Due to the potential hazards associated with chemical weapons if indiscriminately used or accidentally misused, the minimum guidelines for storing investigative equipment as contained in Exhibit 500-2 of IRM 1(16)41, Physical and Document Security Handbook will be followed.

373.5 (1-18-80)

9781

Sensitive Equipment

(1) With regard to sensitive-type equipment, the following procedures should be followed:

(a) Except for induction coils (as noted below) field offices may not purchase, or obtain in any other way, sensitive-type investigative equipment.

(b) Field offices should not permanently maintain an inventory of induction coils. When consensual telephone monitoring is approved in accordance with IRM 9389.2 field offices may locally purchase an induction coil and retain it for the minimum period of time necessary to conduct the authorized consensual telephone monitoring. The induction coil should then be destroyed in accordance with 650 of IRM

1(14)49, Personal Property Management Handbook.

(2) Only those individuals who have received training in the use, operation, and installation of this equipment will be permitted to install and operate it unless specifically authorized to do so by the Assistant Regional Commissioner (Criminal Investigation). These programs will be conducted with sufficient frequency to assure that operators and installers of this equipment retain their expertise.

373.6 (1-18-80)

9781

Electronic Surveillance Equipment

(1) This equipment may only be used for monitoring and recording conversations with the consent of at least one, but not all, the parties to the conversation. The monitoring of telephone conversations with the consent of at least one party can be authorized by the Chief, Criminal Investigation. The monitoring of a non-telephone conversation with the consent of at least one of the parties generally requires the advance written authorization of the Attorney General of the United States. See text 341.33 for additional guidelines.

(2) Consensual electronic surveillance is used when the investigation has progressed to a point where the agent determines that a crucial piece of evidence or corroboration cannot be obtained in any other way.

(3) The only special agents authorized to install and operate electronic surveillance equipment (except induction coils) are those who have attended the Special Electronic Equipment Seminar conducted by the National Office. These agents will be identified by the ARC (Criminal Investigation). In an emergency situation the ARC (Criminal Investigation) may authorize other agents to install this equipment.

373.7 (1-18-80)

9781

Tape Recording Equipment

(1) Hand-held cassette recorders are available in most districts to dictate memoranda of meetings, surveillance notes, reports and other documents which will ultimately be transcribed into typed form. They are not recommended for recording question and answer sessions or depositions due to the lack of tape continuity when a cassette must be changed or switched to the other side. Poor quality cassettes or cassettes greater than 90 minutes (45 minutes per side) are not recommended.

(2) Cassette Transcribers are also provided to many offices for secretarial transcription of cassette tapes recorded on hand-held recorders.

(3) Reel-to-reel recorders are available in many offices to record long meetings, question and answer sessions or depositions when tape continuity and increased fidelity are required.

(4) Specialized recording equipment such as mixers for multiple microphones, filters, playback amplifiers and wireless headphone courtroom amplification systems are available for specific situations from the National Office.

380 (1-18-80)

9781

Surveillance, Searches and Seizures, Raids and Forfeitures

381 (1-18-80)

9781

Surveillance

(1) Surveillance is an investigative technique where an individual or group of individuals are physically observed by special agents in order to obtain information, leads and evidence that have tax significance and would not normally be available through other investigative techniques. Special agents conducting surveillance normally do not have to assume an identity other than their own. However, on some occasions they may need to conceal their identity during the surveillance by assuming a temporary identity.

(2) The following are some of the reasons for conducting a surveillance:

- (a) to obtain evidence of a crime;
- (b) to locate persons by watching their haunts and associates;
- (c) to obtain detailed information about a subject's activities;
- (d) to check on the reliability of informants;
- (e) to locate hidden property;
- (f) to obtain probable cause of obtaining search warrants;
- (g) to obtain information for later use in interrogation;
- (h) to develop leads and information received from other sources;
- (i) to know at all times the whereabouts of an individual; and
- (j) to obtain admissible evidence for use in court.

(3) Whenever a special agent perceives a need to conduct surveillance, he/she will submit a memorandum request to his/her group manager setting forth the pertinent details as to

the purpose, scope, anticipated duration, probable geographic area, number of agents needed, extra costs involved, need for a temporary identity, etc. The group manager will indicate approval or disapproval on the memorandum request and return it to the special agent with a copy forwarded immediately to the Chief, Criminal Investigation Division.

(4) All authorized surveillance conducted in a high crime area, either on foot or in a vehicle(s), will require at least two agents participating in the surveillance. Whenever possible, surveillance requiring the use of a vehicle should be conducted in government-owned vehicles that have two-way radio equipment.

(5) During the course of a special agent's activities, situations may occasionally arise where immediate surveillance is necessary. In such urgent situations, where the surveillance will last no more than one day, the request may be handled telephonically. If the request is approved, the agent will, as soon as possible, prepare a memorandum setting forth the oral request and submit it to his/her group manager. The group manager will indicate his/her approval on the memorandum and return it to the agent, with a copy forwarded immediately to the Chief. However, in such urgent situations where a telephone request is not practicable, the agent may conduct the necessary surveillance without prior approval of the group manager. The agent will, as soon as possible, prepare a memorandum setting forth the nature of the circumstances which precluded him/her from making a request and submit it to his/her group manager. The group manager will initial the memorandum and return it to the agent and forward a copy immediately to the Chief.

(6) The special agent will prepare surveillance notes daily of all pertinent activity that the person was observed doing. Upon final completion of the surveillance, the special agent will prepare a written summary of his/her notes for the file with a copy to the group manager and a copy as an attachment to any other document that may be prepared, i.e., information item, item for the indexing system, etc.

(7) Surveillance activities at tax protest meetings will be limited to attendance at those meetings for the purpose of obtaining information concerning new techniques being advocated in the so-called tax protest movement. Special agents who attend these meetings will not

identify individuals who attend the meetings unless the individuals openly admit that they:

(a) have committed or intend to commit a tax violation; or

(b) advocate that others commit violations of the tax laws; or

(c) advocate the use of threat and/or assault tactics in dealing with Service personnel.

(8) The information obtained relative to (7)(a) and (7)(b) will be processed in accordance with IRM 9311. The information regarding (7)(c) will be processed in accordance with IRM 9142.4. Special computer applications will not be used for this data.

(9) The attendance at tax protest meetings is to be distinguished from peaceful demonstrations directed towards some sort of tax protest. In this regard, Service personnel will be guided by Treasury Department policy which directs that no information should be collected on peaceful demonstrations which involve the exercise of First Amendment rights without contacting the office of the Assistant Secretary (Enforcement and Operations). In such situations, the Chief, Criminal Investigation Division, with the concurrence of the District Director, and ARC, Criminal Investigation will notify the Director, Criminal Investigation Division, who will contact the Assistant Secretary (Enforcement and Operations).

(10) See also IRM 9383.6

382 (1-18-80)

9781

Undercover Work

(1) A penetration-type undercover operation is an investigative technique where an authorized IRS employee assumes an identity and a job or profession other than his/her own for the purpose of legally securing information or evidence necessary in an official inquiry relating to possible tax law violations. In this role, the undercover agent actively attempts to gain the acceptance and the confidence of known or suspected tax law violators and/or their associates.

(2) An undercover operation is a potentially dangerous undertaking and should be limited to those cases or situations that are considered to be particularly significant from a tax administration viewpoint and when other means of securing the desired information or evidence are not feasible.

(3) Requests for undercover operations should specify:

(a) the need for the undercover activity;

(b) the proposed operation objectives;

(c) a cost projection including but not limited to travel, per diem, and confidential expenses;

(d) an estimated completion date for the undercover activity and an estimate of agent-days;

(e) the proposed plan of action including a discussion of any state or federal law violations with which the undercover agent may come in contact, and a proposal for dealing with such situations; and

(f) any other information that is pertinent.

(4) All requests for undercover operations will require the approval of the Director, Criminal Investigation Division. The request must first be approved by the Chief, Criminal Investigation Division, the District Director, the ARC (Criminal Investigation) and then forwarded to the Director. Upon approval by the Director, the request will be forwarded, through normal channels, to the official responsible for approving the confidential expenditures relating to the operation in accordance with IRM 9372.2. The requesting Chief will be notified by memorandum, through normal channels, of the Director's actions. When not approved by the Director, the request will be returned through normal channels to the Chief with an explanation for not approving the operation.

(5) Once the undercover plan for the operation has been approved by the Director, Criminal Investigation Division, no deviation may be made with regard to the stated objectives of the operation without the Director's approval. However, the undercover agent may deviate from the proposed plan of action in order to attain the operation's objective.

(6) The selection, training and cover documents for all agents who will be involved in penetrating-type undercover activities will be provided by the National Office Criminal Investigation Division. All undercover assignments will be on a detail basis. See IRM 0300.4 and Chapter 300, Subchapter 8 of the Federal Personnel Manual with regard to procedures relating to the detailing of employees. The selection of the agent for an undercover assignment must have the concurrence of the Chief in the district where the agent will be working. The agents selected for such assignments will remain assigned to their original districts.

(7) Once the Chief, Criminal Investigation Division, determines that the stated objectives of the undercover operation have been accomplished, or cannot be accomplished, or cannot be accomplished without expending an unreasonable amount of staffpower, he/she should terminate the operation.

(8) Supervision of the undercover special agent will be the responsibility of the Chief in the district in which the undercover agent is working. (See IRM 0300.451 with regard to evaluating an undercover agent when he/she is from another district.)

(9) The Chief will assign a "contact" agent at the district location of the undercover operation to perform on-site liaison with the undercover special agent. The principal duties of the contact special agent are to:

(a) receive daily activity and financial reports of the undercover agent;

(b) provide assistance in the preparation of reimbursement claims and financial earnings;

(c) transmit necessary instructions and information to the undercover agent;

(d) insure that district objectives are being carried out by the undercover agent;

(e) attend to the security and safety of the undercover agent; and

(f) provide immediate assistance in any emergency.

(10) The undercover agent will in all instances report to the Chief or to the contact agent, if the Chief cannot be reached, any illegal activities that come to his/her attention and specify any possible involvement by himself/herself.

(11) Undercover agents will avoid acts of entrapment and will observe the Constitutional rights of those persons whom they come in contact with during their assignments. However, while acting in an undercover capacity, agents are not required to advise a subject of his/her Constitutional rights as contained in IRM 9384.2:(2)(b).

(12) Information obtained as a result of an undercover operation which pertains to violations of laws administered by other law enforcement agencies will be transmitted to the appropriate agencies through regular channels provided the dissemination of the information does not jeopardize the undercover operation or agent. In order to withhold information concerning other violations, the Chief will submit a recommendation, along with justification, through channels to the Director, Criminal Investigation

Division. The Director, Criminal Investigation Division will obtain the advice of the Office of Chief Counsel prior to making a final decision. However, in those instances where there is a disagreement between the Director, Criminal Investigation Division and Chief Counsel, the matter will be referred to the Assistant Commissioner (Compliance) for the final decision.

(13) Information items resulting from undercover operations will be handled according to established procedures unless such action might endanger the operation or the undercover agent. In order to withhold action on information which may have tax significance, the Chief, with the District Director's concurrence, will make the final decision. The Chief will notify the ARC (Criminal Investigation) of any such decision.

(14) Information which is withheld in accordance with IRM 9389.(11), (12) and (13) will be processed according to established procedures either at a later point in time during the undercover operation when release of such information would not jeopardize the agent or undercover operation or following the termination of the undercover operation.

(15) The undercover agent will prepare a monthly statement of earnings from all sources associated with the undercover assignment. Arrangements will be made to have the undercover agent submit his/her total earnings to the "contact" agent periodically, but at least on a monthly basis. The undercover agent should use a form of repayment that will not jeopardize his/her cover, such as money order or cash. The "contact" agent will forward the remittance to the Chief, Resources Management Division in the district office, who will follow the standard procedures in 460 of IRM 1717, Administrative Accounting Handbook, in forwarding the remittance to the Chief, Fiscal Management Branch in the regional office.

(16) Expenditures incurred by an undercover agent cannot be offset against his/her cover employment income. Undercover agents will submit monthly reimbursement claims to the specified imprest funds for all expenditures incurred in connection with the undercover assignment in accordance with IRM 9773.3. Each agent will be required to submit documentation of expenses to the extent that obtaining such documentation would not jeopardize his/her security. The agent will also provide explanations as to why no receipts are available for all

those transactions where he/she would be expected to have receipts. Travel and per diem incurred outside of the undercover assignments will be claimed on travel vouchers (see IRM 9773.3:(7)).

(17) Each month, the "contact" agent will prepare a written summary of the results and progress of the undercover operation and forward it together with the daily and monthly reports to the Chief (see IRM 9389.(11):(9)(a)).

(18) Procedures for agents who assume a temporary identity other than their own for non-penetrating type operations such as "shopping" return preparers, surveillance, etc., are provided in IRM 9383.6.

(19) See also IRM 9389.(11).

383 (1-18-80) 9781 **Searches and Seizures**

383.1 (1-18-80) 9781 **Introduction**

This sets forth the procedures governing the applications, issuance, execution, and return of search warrants and the techniques used in making tax related raids.

383.2 (1-18-80) 9781 **Authority and Procedure**

383.21 (1-18-80) 9781 **Constitutional Authority**

The basic authority for making searches and seizures is in the Fourth Amendment to the Constitution of the United States which states:

"The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the persons or things to be seized."

383.22 (1-18-80) 9781 **Statutory Authority**

18 USC 3105 and 3109, Rule 41 of the Federal Rules of Criminal Procedure, and 26 USC 7302, 7321, and 7608 contain the statutory authority pertinent to searches and seizures by special agents. Pertinent parts of Rule 41 that a special agent should know before attempting to make a search and seizure are quoted below:

"(a) Authority to issue warrant.—A search warrant authorized by this rule may be issued by a federal magistrate or a judge of a state court of record within the district wherein the property sought is located, upon request of a federal law enforcement officer or an attorney for the government.

"(b) Property which may be seized with a warrant.—A warrant may be issued under this rule to search for and seize any (1) property that constitutes evidence of the commission of a criminal offense; or (2) contraband, the fruits of crime, or things otherwise criminally possessed; or (3) property designed or intended for use or which is or has been used as the means of committing a criminal offense.

"(c) Issuance and contents.—A warrant shall issue only on an affidavit or affidavits sworn to before the federal magistrate or state judge and establishing the grounds for issuing the warrant. If the federal magistrate or state judge is satisfied that the grounds for the application exist or that there is probable cause to believe that they exist, he shall issue a warrant identifying the property and naming or describing the person or place to be searched. The finding of probable cause may be based upon hearsay evidence in whole or in part. Before ruling on a request for a warrant the federal magistrate or state judge may require the affiant to appear personally and may examine under oath the affiant and any witnesses he may produce, provided that such proceeding shall be taken down by a court reporter or recording equipment and made part of the affidavit. The warrant shall be directed to a civil officer of the United States authorized to enforce or assist in enforcing any law thereof or to a person so authorized by the President of the United States. It shall command the officer to search, within a specified period of time not to exceed 10 days, the person or place named for the property specified. The warrant shall be served in the daytime, unless the issuing authority, by appropriate provision in the warrant, and for reasonable cause shown, authorizes its execution at times other than daytime. It shall designate a federal magistrate to whom it shall be returned.

"(d) Execution and return with inventory.—The officer taking property under the warrant shall give to the person from whom or from whose premises the property was taken a copy of the warrant and a receipt for the property taken or shall leave the copy and receipt at the place from which the property was taken. The return shall be made promptly and shall be accompanied by a written inventory of any property taken. The inventory shall be made in the presence of the applicant for the warrant and the person from whose possession or premises the property was taken, if they are present, or in the presence of at least one credible person other than the applicant for the warrant or the person from whose possession or premises the property was taken, and shall be verified by the officer. The federal magistrate shall upon request deliver a copy of the inventory to the person from whom or from whose premises the property was taken and to the applicant for the warrant.

"(e) Motion for return of property.—A person aggrieved by an unlawful search and seizure may move the district court for the district in which the property was seized for the return of the property on the ground that he is entitled to lawful possession of the property which was illegally seized. The judge shall receive evidence on any issue of fact necessary to the decision of the motion. If the motion is granted the property shall be restored and it shall not be admissible in evidence at any hearing or trial. If a motion for return of property is made or comes for hearing in the district of trial after an indictment or information is filed, it shall be treated also as a motion to suppress under Rule 12.

"(f) Motion to suppress.—A motion to suppress evidence may be made in the court of the district of trial as provided in Rule 12.

"(g) Return of papers to clerk.—The federal magistrate before whom the warrant is returned shall attach to the warrant a copy of the return, inventory and all other papers in connection therewith and shall file them with the clerk of the district court for the district in which the property was seized.

"(h) Scope and definition.—This rule does not modify any act, inconsistent with it, regulating search, seizure and the issuance and execution of search warrants in circumstances for which special provision is made. The term 'property' is used in this rule to include documents, books, papers and any other tangible objects. The term 'daytime' is used in this rule to mean the hours from 6:00 a.m., to 10:00 p.m., according to local time. The phrase 'federal law enforcement officer' is used in this rule to mean any government agent, other than an attorney for the government as defined in Rule 54(c) who is engaged in the enforcement of the criminal laws and is within any category of officers authorized by the Attorney General to request the issuance of a search warrant."

383.3 (1-18-80)

9781

Unreasonable Searches and Seizures

(1) The definition of unreasonable searches and seizures as used in the Fourth Amendment has not been expressed in a concrete rule. The various courts have had different opinions of what constitutes the basis for a legal search and seizure. In fact the Supreme Court has varied its opinions so often on this subject there can be but one firm conclusion: namely, that reasonableness is determined in each case based upon the facts and circumstances of the particular case. This is not to say that special agents cannot learn some guidelines to follow and conversely some pitfalls to avoid by studying the court rulings and by learning the procedures that will be discussed in this section. *Essentially any search and seizure without a warrant is automatically unreasonable unless:*

(a) It is made incident to an arrest for a crime committed in the officer's presence, [*Draper v. U.S.*] or

(b) The occupant of the premises who has authority understandingly consents.

(2) Anyone legitimately on premises where a search occurs may challenge its legality, [*Cecil Jones v. U.S.*] It is not necessary for him/her to show ownership, right to possession, or dominion over the premises. Entering a house with permission of the occupant's landlord, [*Elmer S. Chapman v. U.S.*] or a hotel room with consent of the management or a desk clerk [*Stoner v. California; U.S. v. Jeffers; Lustig v. U.S.*] is insufficient, and a search and seizure resulting from such entry is illegal. The Supreme Court has refused to rule specifically on whether a wife may, in her husband's absence, waive his constitutional rights by consenting to a search of their home. [*Amos v. U.S.*] Some lower courts have held that a wife has implied authority to consent to the search. [*Stein v. U.S.; U.S. v. Pugliese; U.S. v. Sergio*] Others have declared that she does not have such authority. [*Cofer v. U.S.; U.S. v. Rykowski*] A search has been deemed reasonable where a partner [*U.S. v. Sferas*] or office manager [*U.S. v. Antonelli Fireworks Co.*] consented to it, but not where the consent was that of a handyman in a defendant's store. [*U.S. v. Joseph Harry Block*] One

who shares a desk with fellow employees on business premises of their employer may move to suppress evidence against him obtained from a search of the desk without his consent. [*Villano v. U.S.*]

(3) An unreasonable search and seizure, in the sense of the Fourth Amendment, does not necessarily involve the employment of force or coercion, but may be committed when a representative of any branch or sub-division of the Government, by stealth, through social acquaintance, or in the guise of a business call, gains entrance to the house or office of a person suspected of a crime, whether in the presence or absence of the owner, and searches for an abstracts papers without consent. [*Gouled v. U.S.*]

(4) The exclusionary rule suppressing evidence seized in violation of the Fourth Amendment applies to State, as well as Federal, officers in any criminal case. [*Mapp v. Ohio*] Where the State and Federal officers have an understanding that the latter may prosecute in Federal courts offenses which the former discover in the course of their operations, and where the Federal officers adopt a prosecution originated by State officers as a result of a search made by them, the same rule as to the admissibility of evidence obtained in the course of the search should be applied as if it were made by the Federal officers themselves or under their direction. [*Sutherland v. U.S.*] These decisions and others in the same vein are of particular importance since the Criminal Investigation Division, in some instances, may adopt tax-related cases from State officers.

(5) In *Will P. Clay v. U.S.* special agents conducted a two-months' surveillance which indicated that Clay was operating a lottery business involving a pattern requiring him to be at certain places at certain times during the day. He used various automobiles during the period of surveillance and was observed passing and receiving articles common to a lottery business. Based upon this surveillance, Clay was stopped on a highway by special agents and his automobile searched. Clay was arrested after a special agent observed a lottery booklet on his person. The court held that it was an unreasonable search and seizure without the proper search warrant. The "mere act of a known gambler driving an automobile on a public highway will not justify an officer forcing him to stop to be searched or arrested for a suspected violation." Further, "nothing discernable to the senses taught reasonably that crime was then being done until the agent saw, and demanded, the lottery booklet. But this was too late, for the strong arm of the law had peremptorily stopped this traveler and placed him under evident immediate command of Government officers." The court pointed out there was insufficient evidence indicating affirmative acts for the

agents to reasonably believe that a felony had been committed. Therefore, it was essential that the agents discern some evidence by their senses to induce a belief in them that a misdemeanor was being committed in their presence.

(6) Unreasonable search and seizure cases usually result from a lack of understanding of the law and the failure to state in sufficient detail the actual known or available facts, either in applications for warrants or while testifying to the facts. Another cause of illegal searches has been overzealousness on the part of the officers. [*Trupiano v. U.S.*] As a general rule, special agents will find it necessary to secure search warrants in tax cases, since very seldom will a crime be committed in their presence which would give them sufficient probable cause to arrest and then make a search incident to the arrest.

(7) In determining the question of reasonableness, the best rule of procedure is to operate as far away from the dividing line as the available facts of the case will permit and always on the legal side thereof. In addition to learning as much of the law as possible and how to relate the facts in all of their details, the special agent should constantly ask the question, "Are my actions reasonable in the eyes of the courts?"

383.4 (11-10-81)

9781

Approval for Search Warrants

(1) Chief Counsel and the Department of Justice will consider requests for search warrants in significant tax cases where a violation of Title 26 can be proved by the evidence allegedly in the possession of the individual, or on the premises to be searched. Search warrants may be authorized in income tax, multiple refund and return preparer cases, however, application for a search warrant should be sought only in connection with significant tax cases in view of the Service's, and the Department's, practice of restraint. The significance of a tax case may be determined by a consideration of such factors as: the amount of taxes due, the nature of fraud, and the impact of the particular case on voluntary compliance with the revenue laws.

(2) The Chief, Criminal Investigation Division may authorize special agents to apply for search warrants in non-income tax cases specifically in the enforcement of the wagering tax & laws. The Chief, Criminal Investigation Division will, upon approval of the District Director, obtain the approval of District Counsel on the legal sufficiency and form of affidavits for warrants prior to contacting the United States At-

torney and/or the Federal Magistrate to obtain a search warrant.

(3) All requests for search warrants in income tax investigations must first be cleared with the ARC (Criminal Investigation) and with District Counsel who is responsible for coordinating requests with Chief Counsel and the Department of Justice.

(4) When requesting authorization for a search warrant the request (as well as the accompanying affidavit) must establish the following:

(a) a factual showing that there is current probable cause to believe that a tax crime has been committed, including a factual showing that there is likely to be a significant tax impact.

(b) a factual showing that there is probable cause to believe that evidence sought is seizable by virtue of being connected with the crimes.

(c) a factual showing that there is current probable cause to believe that the evidence sought is on the premises to be searched. The search warrant request should specify the precise location of records on the premises to the extent possible.

(d) The affidavit must contain a particular description of the premises to be searched and of the specific items to be seized.

(e) As is commonly the case, where the affidavit is based on information provided by an informant, it must establish the informant's basis of knowledge and must factually support that the informant is credible and that the information provided is reliable.

(5) Requests for search warrants should be submitted in writing through normal Criminal Investigation channels to District Counsel. District Counsel will coordinate the request with Chief Counsel who will perform a review of the request. Absent extraordinary circumstances, the search warrant request will not be approved by Counsel or the Department of Justice based on an oral presentation of facts establishing that there is probable cause.

(6) To prevent any doubt regarding the origin(s) of information available for civil use, applications for search warrants will not be initiated in administrative cases when a request for a grand jury investigation is in process or it is anticipated that one will be in process during the time the warrant would be executed. See IRM 9267.3:(3) regarding the appropriate indexing of information obtained prior to the receipt of grand jury information. For grand jury investigations in progress, see the special procedures with regard to search warrants contained in IRM 9267.3:(21).

383.5 (1-18-80)

9781

Probable Cause and Preparation of Search Warrant

(1) A warrant must be based upon probable cause to be valid. Probable cause consists of facts or circumstances which would lead a reasonably cautious and prudent man to believe that:

(a) the person to be arrested is committing a crime or has committed a felony, or

(b) property subject to seizure is on the premises to be searched and an offense involving it has been or is being committed.

(2) The terms "reasonable search" and "search based upon probable cause" are not synonymous expressions. "Probable Cause" is just one element of reasonableness. Officers may have probable cause to search a house and still conduct an unreasonable search of that house.

(3) In determining what is probable cause we are not called upon to determine whether the offense charged has in fact been committed. We are concerned only with the question of whether the affiant had reasonable grounds at the time of his/her affidavit and the issuance of the warrant for the belief that the law was being violated on the premises to be searched. If the apparent facts set out in the affidavit are such that a reasonably discreet and prudent man would be led to believe that there was a commission of the offense charged, there is probable cause justifying the issuance of the warrant. [*Beal v. U.S.*] Courts are required to interpret the affidavits in a common sense rather than a hypertechnical manner. The Supreme Court has stated:

"This Court is . . . concerned to uphold the actions of law enforcement officers consistently following the proper constitutional course. . . . It is vital that having done so their actions should be sustained under a system of justice responsive both to the needs of individual liberty and the rights of the community." [*U.S. v. Ventresca*]

(4) The affidavit may be based on hearsay so long as it gives a reason for crediting the source of the information. [*Cecil Jones v. U.S.*] The officer executing the affidavit may rely on information received through an informant if the informant's statement is reasonably corroborated by other matters within the officer's knowledge. [*Cecil Jones v. U.S.*; *Draper v. U.S.*] The affidavit need not be confined to the direct personal observations of the affiant. [*Aquilar v. Texas*] However, it should at least relate some of the facts from which the officer has concluded the informant was credible or his information was reliable. For example, it may state that the

informant has given correct information in the past, and that the present information is confirmed by other sources. [*Acquilar v. Texas*] Observations of fellow officers engaged in a common investigation are also a reliable basis for a warrant. [*U.S. v. Ventresca*; *Rugendorf v. U.S.*; *Chin Kay v. U.S.*]

(5) The first thing that a special agent must do is to determine by investigation that one of the three grounds for obtaining a search warrant exists (text 383.22). In applying this to Criminal Investigation Division work, the special agent will usually find that a gaming device violation is involved and that certain paraphernalia and property are being used as the means of committing the criminal offense. The next step is to prepare an affidavit stating facts that will establish grounds for issuing the warrant and convince the issuing authority that such grounds exist, or at least convince him/her that there is probable cause to believe that the facts exist.

(6) Affidavits submitted by special agents to establish grounds for the issuance of a search warrant in a case should include, but not be limited to the following items.

(a) Exact description and location of premises to be searched.

(b) Name of owner or person occupying the premises.

(c) Description of property being used to violate the tax laws.

(d) Internal Revenue Code sections being violated.

(e) If applicable, a chronological detailed statement of facts obtained by surveillance and examination of third party records. In preparation of this part of the affidavit the special agent should make sure that the facts are expressed in clear and unmistakable words, because the validity of the search warrant will stand or fall depending upon what appears within the four corners of the affidavit. The facts set forth need not be sufficient to support a verdict of guilt beyond a reasonable doubt. [*Washington v. U.S.*] They must establish, however, something more than mere suspicion or possibility of criminal activity. It may be said as a general proposition, that mere conclusions of the affiant unsupported by concrete facts, or facts alleged upon bare belief or information, unsupported by other reliable facts affirmatively averred, are inadequate in the eyes of the law to save the affidavit and the warrant based upon it from the con-

demnation by the courts, if genuine probable cause is not shown. Probable cause must exist at the time of the issuance of the warrant. An affidavit is defective which relates to prior observations and does not allege that there is reason to believe the condition still exists. [*U.S. v. Sawyer*]

(f) Statement of facts obtained from confidential sources, if applicable to the case although this in itself is not sufficient for probable cause.

(7) The special agent should consider obtaining the assistance of district counsel in preparing his/her own affidavit rather than depend upon the issuing authority for search warrants to prepare it for him/her. In a case involving testimony of several special agents to establish probable cause, each agent should prepare a separate affidavit. [*Regina Merrit, et al v. U.S.*] An affidavit is not invalidated if, due to lack of space, material facts are set forth on unsworn attachments stapled to the affidavit at the time it was sworn to. [*Brooks v. U.S.*] However, all pages of the affidavit should be associated by reference, for example, page 1 of 3 pages, and each page should contain the signature of the special agent and the date.

(8) After preparation of the affidavit, the special agent's next step is to make application for a search warrant before one of the issuing authorities. Ordinarily, this person will be a United States Magistrate who will, after review of the affidavit, place the special agent under oath and sign it. (If necessary the special agent should tactfully insist that he/she be sworn.) The Magistrate will then prepare a search warrant based upon information and probable cause contained in the affidavit. Each special agent who submits an affidavit should appear in person before the issuing authority and execute the affidavit. [*Will P. Clay v. U.S.*] The warrant must state the names of persons whose affidavits support it. [*Rule 41(c) F.R.C.P.*] A warrant is invalid if the affidavit is made by a person in a false name. [*King v. U.S.*]

(9) The search warrant should be directed to a special agent or other civil officer of the United States authorized to enforce or assist in enforcing the law. Some courts permit the search warrant to be directed to the Chief, Criminal Investigation Division, or any of the special agents under his/her jurisdiction, while others object to the class identification and require specific persons be named. It is advisable to

name more than one person to permit service by any of the named persons in the event of multiple places to be searched, sickness of an agent, etc. It will describe the premises and/or person to be searched, the paraphernalia and property used to violate the tax laws, and a list of the Internal Revenue Code sections being violated. It will make reference to the affidavits attached to support the grounds and probable cause for issuance of the search warrant. Exhibit 600-8 consists of a sample affidavit for search warrant and a sample search warrant.

383.6 (1-18-80)

9781

Preparation for the Search

(1) A raid leader should be designed to organize the searching party and to be charged with the responsibility of conducting the search. The leader will determine and secure the number of agents and equipment needed to make the raid; will make specific assignments to each agent; and, decide the appropriate time to start the search. A map and diagram of location and buildings should be prepared.

(2) The leader will brief the searching party on the duties of each agent, acquaint them with the map and diagram, describe the individuals and paraphernalia expected to be in the premises, discuss with the party protective measures for personal safety of agents and alleged violators, tell them the time when the search will start and the methods of communication between members of the party, and furnish the members of the party with necessary equipment to conduct the search.

383.7 (1-18-80)

9781

The Approach and Search

(1) Ordinarily, gaming device suspects will not offer resistance to the raiding party. However, to ensure the greatest factor of safety to everyone involved, all raids should be conducted on the assumption that the individuals sought are on the alert and possess the same type of weapons as the raiding party and under the pressure of the search may attempt to use them. Badges should be worn conspicuously when entering the premises.

(2) The exact manner in which the raiding party should approach the premises to be searched will depend upon the type of place and its surroundings. In most tax raids special agents will find it possible to approach the premises in question from different directions so as to cover each exit. In raids on more or less isolated houses which require agents to cover considerable open territory before getting to their posts and where roads lead to the place from only one direction, it is not ordinarily prudent to drive directly to the place with automobiles because this will warn the occupants of the house and enable them to escape from the other side. In such cases automobiles should be left at a distance and the raiding party should proceed on foot to their respective stations. Usually each agent will proceed separately so that suspicion will not be aroused. When the place to be raided is in a city or is a room or apartment, it may be desirable to drive to within a short distance of the place to be raided and to have the agents immediately proceed to their respective posts. In any approach in connection with a tax raid, the main consideration to keep in mind is that entrance should be gained before the occupants have time to destroy the paraphernalia to be seized.

(3) The special agent charged with the responsibility of serving the search warrant and at least one other agent should ordinarily go to the front door of the premises, identify themselves, and ask for admittance. If admitted, they will state their reason for being there, read the search warrant to the person in control of the premises, and serve him/her with a copy of the warrant. If the occupants are attempting to destroy the paraphernalia when the agents gain entrance, steps should immediately be taken to prevent this before the search warrant is read.

(4) Sometimes it is necessary to force entrance if the occupants refuse to answer or open the door. An officer is allowed to break open any door or window of a house to execute a search warrant, if after notice the agent's authority and purpose, he/she is refused admittance, or when necessary, to liberate the agent or any one helping him/her execute the warrant. [18 USC 3109.] It may also be advisable to use subterfuge to gain entrance if it is suspected or known that the premises are protected by steel doors or bars that would delay the agent to such an extent that the paraphernalia could be destroyed. Although a special agent has authority to use either force or subterfuge, care

should be taken not to give the suspect a basis for claiming an unreasonable search.

(5) After gaining entrance and serving the search warrant, the special agents should assemble all occupants of the premises in one room and place them under control of at least two agents. At this time questioning of suspects, if practicable, should be started by agents assigned to this duty.

(6) A thorough search should be made of the premises to find and seize all gaming device paraphernalia and property used or intended to be used in the commission of the crime. The room should be searched completely and at least two agents should be present at all times. All articles which may be of evidentiary value should be carefully marked for identification. These markings should be of such a character as to not injure the evidence itself, yet not be subject to obliteration. The identification should contain information as to the agent or agents who found the item, date, time, and exact spot where it was located. The identification of documents and chain of custody are discussed in text 355. It may be desirable to take photographs or make diagrams of the entire crime scene and the paraphernalia and property, while it is still at the place where it was discovered. Photographs made in a situation like this are very effective to refresh the memory of the agents.

(7) After proper identification of each item, the best method of maintaining the chain of custody is to appoint one special agent to have continuous control of all evidence until he produces it at the trial of the case.

383.8 (1-18-80)

9781

Seizures Under Warrant

383.81 (1-18-80)

9781

Gaming Device Seizures Under Warrant

Paraphernalia and property used or intended to be used in violation of tax related and gaming device laws can be seized by special agents. [26 USC 7302; Handbook Text 383.22.] When a valid search is made pursuant to a warrant, property related to another crime may be legally seized. [U.S. v. Eisner]

MT 9781-10

383.81

IR Manual

383.82 (1-18-80)
**Inventory of Seized Property
Under Warrant**

9781

After proper identification; an inventory of all property seized should be made in the presence of the applicant for the warrant and the person in control of the property, if they are present. If the person in control of the premises is not present, the inventory should be made in the presence of at least one credible person besides the applicant for the warrant. Those items named in the search warrant and seized must be listed on the back of the warrant. Those articles seized but not named in the warrant should be listed in a separate inventory. The applicant for the warrant should sign a receipt and deliver it and a copy of the warrant to the person in control of the property, unless there is no one present, in which case he/she will leave a copy of the warrant and receipt in the place where the property was seized. When contraband articles such as counterfeit equipment, non-tax-paid liquor, narcotics, or illegal firearms are seized the special agent should immediately notify the appropriate enforcement agency.

move to a place where he/she will not have access to any weapon. If the subject shows some hesitancy in responding to the arresting officer's request, then he/she may be moved to a place which will insure the safety of our employees.

(2) If, when applying for an arrest warrant, there is probable cause for believing evidence of a crime can be found at a specific location, a search warrant should be sought at the same time. Also, if probable cause as to the presence of evidence on the premises is developed only after the execution of the arrest warrant, the arresting officer may go before a magistrate to secure a search warrant. Other members of the arresting party may remain on the premises in order to prevent destruction of evidence in the interim.

383.83 (1-18-80)
Return of Search Warrant

9781

The statute states that the warrant shall be returned within ten days to the issuing authority. Although this provision is directory and failure to comply will not void the warrant, special agents are cautioned to make the return within the ten-day period.

383.92 (1-18-80)
Searches Made With Consent

9781

(1) A special agent can make a search at the request or with the consent of the occupant of the premises. [18 USC 2236 (c).] However, a search made with permission of the occupant's landlord, and without consent of the occupant, is illegal. [Chapman, Elmer S. v. U.S.]

(2) In all cases the person who consents to the search must be the one who has such right or a person authorized to act for him/her. A spouse may not ordinarily waive the rights of the other spouse unless authorized by the other spouse to do so. An employee has no authority to waive the constitutional rights of an employer unless the employee is authorized to act as an agent for the employer.

383.9 (1-18-80)
**Searches and Seizures Without
Warrant**

9781

383.91 (9-8-80)
Searches Incident to Arrest

9781

(1) Special agents should not, in the course of an arrest, conduct a warrantless search of a premises for evidence. Special agents should limit their search to the person of the arrestee. However, no prohibition against warrantless searches for weapons, when necessary, is intended. For example, if during the execution of an arrest warrant, the subject moves towards a desk drawer, that drawer may be searched to determine if it contains a weapon. Nevertheless, in most instances this particular situation can be avoided by requesting the subject to

(3) The following warning should be given when any person is requested to waive service of a search warrant and to voluntarily consent to a search of his/her person or premises: "Before we search your premises (or person) it is my duty to advise you of your rights under the Fourth Amendment to the Constitution. You have the right to refuse to permit us to enter your premises (or search your person). If you voluntarily permit us to enter and search your premises (or to search your person) any incriminating evidence that we find may be used against you in court, or other proceedings. Prior to permitting us to search, you have the right to require us to secure a search warrant."

(4) Giving the above warning does not eliminate the necessity for also giving the *Miranda* statement of rights outlined in Document 5661 when a person in custody is to be questioned on matters other than the request for consent to search. Exhibit 300-5 contains the statement of rights.

(5) Whenever practicable, a written waiver of the Fourth Amendment rights should be obtained from the person granting consent in order to help establish that his/her consent was specific and clear and that he/she made the waiver voluntarily with knowledge and understanding of his/her constitutional rights.

(6) The guidelines contained in (3) to (5) above are not applicable to situations in which consent to search or service of search warrants are not required under existing law, such as searches of persons lawfully arrested, lawful searches of conveyances or frisking for weapons for an officer's protection if the officer has reason to believe that he/she is dealing with an armed and dangerous individual.

383.93 (1-18-80)

9781

Searches of Vehicles and Vessels

The right to search conveyances without search warrants arises from their mobile character. Special agents must be able to show probable cause and the impracticability of obtaining a search warrant to search a conveyance without a warrant. [*U.S. v. Stoffey*; *Clay v. U.S.*]

383.94 (9-8-80)

9781

Searches and Seizures of Abandoned Property

A warrantless search and seizure of abandoned property is generally valid unless it intrudes onto premises under the exclusive control of some person who does not consent thereto. This allows special agents to legally conduct a warrantless search and seizure of a taxpayer's trash when it is found in a common area for pick-up by a trash collector or with the trash collector's consent, when it has already been picked up by the trash collector. [*U.S. v. Minker*].

383.(10) (1-18-80)

9781

Seizures of Records

(1) Papers and records, like other forms of property, are subject to seizure and the fact that they possess no pecuniary value is of no significance in determining whether they may be seized. Documents which are the means and instruments or fruits of the crime may be seized in the course of a legal search. [*Gouled v. U.S.*]

(2) Papers and records have been excluded as evidence on the grounds that they were not specifically described in the search warrant or the supporting affidavit failed to show probable cause that they were at the premises to be searched. [*Alioto v. U.S. 216 F. Supp. 48, 63-1 USTC 9552 (E. D. Wis.).*] In other cases, the courts have admitted property not described in the search warrant when it bears a reasonable relationship to the purpose of the search. Because of this relationship, a court approved the seizure of money in a wagering raid even though the search warrant described the property to be seized as "betting slips, rundown sheets, records and other paraphernalia and equipment." [*U.S. v. Joseph*]

(3) The Supreme Court has upheld the use of search warrants to seize books and records of financial transactions. [*Andresen v. Maryland*] In this case the Court ruled that the search of Andresen's office for business records, their seizure and subsequent introduction into evidence did not offend the Fifth Amendment. Although the seized records contained statements that the accused had committed to writing, he was never required to say anything. The search for and seizure of these records was conducted by law enforcement officers and introduced at trial by prosecution witnesses.

383.(11) (1-18-80)

9781

Seizure of Contraband

Contraband is subject to seizure at any time, with or without a search warrant. However, if the contraband was seized as the result of an illegal search then the contraband cannot be admitted into evidence. Examples of contraband are counterfeit currency, untaxed liquor, narcotics and illegal firearms.

383.(12) (1-18-80)

9781

Duties of Special Agent After Arrest, Search, and Seizure

(1) The prisoners should be escorted without unnecessary delay before the nearest United States magistrate (or other nearby officer empowered to commit Federal prisoners). (See Text 723.)

(2) A Form 1327A, Arrest Report, as required by IRM 9530 will be prepared by the special agent not later than the close of the next business day following the arrest.

(3) Each special agent who participated in an arrest, search, and seizure should prepare a detailed memorandum as soon as possible after the raid setting forth information concerning what was observed, the duties performed, and any statements made by the persons arrested. This memorandum will refresh the agent's memory when he/she has to testify during the trial of the case and will help prevent conflict between the various agents' testimony.

(4) Property seized during a raid should be inventoried, stored, and appraised in accordance with the requirement contained in Text 384 on forfeiture procedures.

(5) A final case report and a seizure report, if applicable, will be prepared by the special agent. Exhibits 600-7 and 600-9 contain sample gaming device and seizure reports.

383.(13) (1-18-80)

9781

Seizures By Other Agencies

(1) Special agents have, on occasion, participated in raids conducted by other Federal, State, or local law enforcement agencies. Because of the possibility of legal actions involving special agents for alleged crimes and torts committed by other participants in the raid over whom IRS has no control, and the risk that data obtained by the IRS as a result of the search could be suppressed if the search is deemed to be illegal, the following guidelines should be followed.

(a) Service personnel should refrain from active participation in the execution of a non-IRS search and/or arrest warrant.

(b) When Service personnel accept the fruits of an executed non-IRS search, before they expend manpower investigating a tax case arising from this evidence, they should consult with District Counsel as to the legality of the warrant, the methods used in the search, the

objects seized during the search, and any other legal problem that may arise if the evidence were to be subsequently used in a criminal or civil tax case.

(2) See also IRM 9451.2(3)

384 (1-18-80)

9781

Forfeiture Procedures

384.1 (1-18-80)

9781

Introduction

This covers the internal revenue laws and the Service procedures relating to forfeitures.

384.2 (1-18-80)

9781

Authority to Seize Property for Forfeiture

(1) It is unlawful to have or possess any property intended for use or which has been used in violation of the internal revenue laws or regulations prescribed under them, and no property rights exist in any such property. [26 USC 7302.] The Secretary or the Secretary's delegate is authorized by statute to seize such property. [26 USC 7321.]

(2) Forfeiture is strictly limited to personal property, and is not authorized as to real property. [U.S. v. *One 1953 Glider Trailer*; *Chief Counsel's Memorandum July 6, 1961, CC:E-40.*] A motor vehicle used or intended for use, [U.S. v. *One 1953 Oldsmobile Sedan*] or containing property used or intended for use in connection with operation in violation of the internal revenue laws is subject to seizure for forfeiture. Currency shown to bear a relationship to the offense comes within the definition of property intended for use in violating the internal revenue laws and is likewise subject to forfeiture. [U.S. v. *Leveson*; U.S. v. *\$1,058.00 in currency*]

(3) Failure to pay the special tax on coin-operated gaming devices before they are used in trade or business subjects them to seizure and forfeiture, regardless of the operator's future intent to pay the tax. [U.S. v. *Five Coin-Operated Gaming Devices*]

(4) A search warrant may be issued for seizure of property used or intended for use in violation of internal revenue laws. [Rule 41(b), F.R.C.P.] A seizure in violation of the Fourth Amendment will not sustain a forfeiture, [*One 1958 Plymouth Sedan v. Pennsylvania*] unless the property seized is contraband per se. [U.S. v. *Jeffers*; *Trupiano v. U.S.*]

383.(12)

MT 9781-10

384.3 (11-10-81)

9781

Methods of Forfeiture

(1) Administrative forfeiture procedures, as contained in IRC 7325, are followed when the seized property has an appraised value of \$2,500 or less, and no proper claim and cost bond has been filed by a claimant generally within thirty days of the first date notice of seizure is published. The property is forfeited to the United States by the District Director of Internal Revenue, based upon evidence showing that it was used or intended to be used in violating the internal revenue laws. The administrative procedures for both administrative and judicial forfeiture of property seized by the Criminal Investigation Division are set forth in IRM 9454 through 9459.

(2) Judicial forfeiture procedures are employed when the seized property has an appraised value in excess of \$2,500 or a claim and cost bond has been timely filed by a claimant concerning property valued at \$2,500 or less. A libel petition is filed in the judicial district where the property was seized. The proceedings to enforce such forfeitures shall be in the nature of a proceeding in rem (against the property itself) in the United States District Court for the district where such seizure is made. [26 USC 7323(a).]

(3) All necessary documents in all forfeiture cases should be forwarded to the General Legal Services function of the Office of Regional Counsel no later than five weeks after seizure.

384.4 (1-18-80)

9781

Essential Element to Effect Forfeiture**384.41** (1-18-80)

9781

Burden of Proof in Forfeitures

The Government must establish by the preponderance of the evidence that the seized property was used or intended to be used in violating the internal revenue laws.

384.42 (1-18-80)

9781

Evidence to Support Forfeitures

The special agent should submit all available evidence which indicates relationship between the seized property and the violation.

384.5 (1-18-80)

9781

Duties of Special Agent in Seizure and Forfeiture Cases**384.51** (1-18-80)

9781

Use of Raid Kits

(1) Raid kits have been used in the past with considerable success to aid special agents in completing the documents and reports which are required in gaming device investigations. The necessary forms for use in such kits have been developed to ensure uniformity of reporting and to eliminate confusion and delays which may arise when special agents attempt to improvise forms to meet the circumstances of the raid. The forms are adaptable for use in either income tax or gaming device investigations.

(2) The kits should contain the following as appropriate.

- (a) Search warrant, original and one copy.
- (b) Arrest warrant original and one copy.
- (c) A memorandum setting forth the plan for the raid, responsibilities of each assigned special agent, and description of suspected violators.
- (d) A detailed map showing the relative location and interior layout of the place to be raided.
- (e) Form 3389, Seized Property Notice and Identification Tag.
- (f) Form 181, Inventory Record of Seized Vessel, Vehicle or Aircraft.
- (g) Form 141-A, Special Moneys Report.
- (h) Form 226-A, Appraisement List (Seized Personal Property).
- (i) Form SF 1034, Public Voucher for Purchases and Services Other Than Personal.
- (j) Form 4008, Seized Property Report.
- (k) Forms 2311 and 2311A, Affidavits.
- (l) Forms 2039 and 2039A, Summons.
- (m) Masking tape or scotch type tape to seal entry and discharge chambers of gaming devices and for other possible uses.
- (n) Pencils, writing pads, paper sacks, and handstapler.
- (o) Money wrappers.

(3) Sufficient copies of all forms should be included to meet the anticipated needs of the special agents. Although some forms may not be required on the day of the raid, all materials should be assembled in advance to ensure a more efficient operation.

384.52 (1-18-80)

9781

Custody and Storage of Seized Property

(1) All property of any nature seized by a special agent shall remain under the jurisdiction of the United States District Court in the judicial district where seizure was made [*Rush v. U.S.*; *Gerth v. U.S.*] until such time as forfeiture action has been completed or terminated.

(2) Seized vehicles, coin-operated gaming devices and other personal property (except moneys) of more than nominal value will be stored at the earliest practicable date in the nearest suitable contract garage, or other designated place of storage. The nature of the property to be stored shall be considered in determining whether a garage or other more appropriate storage facility shall be used.

(3) Special moneys seized by a special agent shall be stored in a secure depository at the earliest practicable time after seizure. Special moneys include currency, coins, checks, jewelry, negotiable instruments and other articles of comparatively great value but small in physical size. A separate container or package will be used for the coin content seized from each gaming device, or other tax case and the special moneys seized from each person at each location. Normally, moneys will be placed in a container or package which cannot be opened without obvious break and the container or package will be delivered to the teller of a district area or zone office, if one is located within the judicial district where seizure was made.

(4) When authorized by the District Director as being in the best interest of the Service (because of lack of adequate or secure Service facilities or other good reason), the special agent may rent a safe deposit box in a commercial depository, such as a bank, and store therein moneys seized. The seizing officer and at least one other officer who can identify the moneys shall have access to the box and should be present at each entry into the box.

(5) The seizing officers may store the containers or packages in the common storage facilities consisting of one or more safe deposit boxes which may have been authorized by the District Director. Such boxes are rented in the name, "District Director of Internal Revenue," with only two Criminal Investigation officers (special agent, group supervisor, staff assistant, Assistant Chief, or Chief) having access

thereto as custodians. These officers act as safekeepers in the same capacity as the district teller. Constructive custody, however, still remains with the seizing officer as long as he/she is available within the district and he/she is responsible for reporting the disposition of moneys.

(6) As soon as practicable after seizure of a coin-operated gaming device, the seizing officer shall open, or cause to be opened, the coin receptacle or receptacles of the device, and remove and count the money contents of each device separately, in the presence of at least one other special agent who can be a witness. The special agents who conducted the seizure shall deliver the coin-operated gaming device, minus its contents and at the earliest practicable date to the nearest suitable contract garage or other designated place of storage located within the judicial district where the seizure was made. The appraisal of seized coin-operated gaming devices will be made as outlined in Text 384.53. After forfeiture, gaming devices *per se* will be destroyed, or otherwise disposed of according to instructions of the Secretary of the Treasury or the Secretary's delegate. [26 USC 7326.] All forms (except Form 181), distributions, and procedures specified in Text 384.53 shall be used to the extent applicable in seizures of coin-operated gaming devices and their contents.

384.53 (1-18-80)

9781

Preparation of Seizure Forms

(1) Before or incidental to the storage of property, the special agent will prepare and execute seizure forms in accordance with IRM 9455.

(2) Sample copies of seizure forms are included with the sample seizure report, Exhibit 600-9.

(3) The case number used on the seizure report shall be shown on all copies of the forms and other documents relating to the seizure.

384.54 (1-18-80)

9781

Seizure Report

A seizure report, Form 4008, bearing the same number as the related case report, will be prepared as soon as practicable by the special agent in accordance with the procedure outlined in Subsection 634.2. Exhibit 600-9 contains a sample seizure report.

384.55 (1-18-80) 9781**Supplemental Investigations and Reports**

The seizing special agent will make, as requested, any necessary supplemental investigations and reports relating to the seizure, including investigations relating to the merits of a petition for remission or mitigation of forfeiture or of an offer in compromise. Exhibit 600-10 contains the format and instructions for a report relating to investigations of a petition for remission or mitigation of forfeiture and shall be followed insofar as applicable.

390 (1-18-80) 9781**Arrests****391** (1-18-80) 9781**Definition of Arrest**

An arrest is the taking into custody of a person accused of a crime so as to ensure his/her presence to answer the charges.

392 (1-18-80) 9781**Elements of Arrest****392.1** (1-18-80) 9781**Authority to Arrest****392.11** (1-18-80) 9781**Statutory Authority**

(1) A special agent is given authority by statute:

(a) To execute and serve search and arrest warrants;

(b) To make arrests without warrant for any offense against the United States relating to the internal revenue laws committed in his/her presence, or for any felony cognizable under such laws if he/she has reasonable grounds to believe that the person to be arrested has committed or is committing the felony. [26 USC 7608]

392.12 (1-18-80) 9781**Non-Statutory Authority**

The Supreme Court has stated that in the absence of a controlling federal statute, the law of arrest of the state where the arrest is made is controlling.

392.2 (1-18-80) 9781**Arrests Without Warrants**

(1) In the absence of a statute authorizing a federal officer to make an arrest without a war-

rant, that officer has the same powers of arrest as a private citizen.

(2) A special agent's power to make an arrest without warrant as a private citizen, when valid under state law, is not made invalid because the crime is outside the scope of the Internal Revenue laws.

(3) An arrest without warrant is a serious matter and could subject the person making the arrest to criminal and civil liability for false imprisonment or false arrest. Therefore in order for special agents acting as private citizens to be authorized to make a warrantless arrest, it is generally necessary that a violation constituting a felony be committed in their presence or the special agent reasonably believes the person whom he/she arrests has committed a felony.

392.3 (1-18-80) 9781**Officer's Intent to Arrest**

The officer making an arrest without a warrant should make his/her intent to arrest known to the person arrested. Because intent is subjective in nature and not discernible by one of the five senses, the arresting officer should declare his/her intention to make an arrest and do some physical act to show an intent to restrain the person arrested. Historically arrest has been accomplished by physical laying on of hands but the present concept is that arrest is accomplished when the prisoner complies with the directives of the arresting officer.

392.4 (1-18-80) 9781**Offender Must Know He/She Is Being Arrested**

It is not enough that the arresting officer should invite the offender to accompany the officer. The offender must know that he/she is under compulsion to go with the arresting officer. This is usually accomplished by the arresting officer's saying "You are under arrest for (here state the offense)" and then doing whatever is necessary to restrain and control the offender.

392.5 (1-18-80) 9781**Offender Must Submit**

Before arrest is accomplished the offender must submit to the authority and will of the arresting officer. All resistance of the offender must be overcome, however temporary it may be. After the offender submits to the authority of

the arresting officer, further resistance or attempt to escape constitutes another offense.

393 (1-18-80)

9781

Force In Conducting the Arrest

(1) A special agent may use only that degree of force necessary to ensure compliance with the order of arrest. Use of excessive force may subject the arresting officer to law suits and disciplinary action. (See Policy Statement P-9-37.)

(2) Administrative orders of the Treasury agencies forbid the use of extreme force even in a felony case, except in self-defense or defense of another. Therefore, special agents should use firearms only in self-defense or defense of another.

394 (1-18-80)

9781

Proceedings Before the Magistrate

Text 723 covers the preliminary hearing before the United States Magistrate.

395 (1-18-80)

9781

Fingerprints

(1) Officers may take an arrested person's fingerprints by force if necessary for the purpose of identifying the individual and for detecting crime. [*Kelly v. U.S.*]

(2) The equipment required for taking fingerprints consists of an inking plate, a cardholder, printer's ink (heavy black paste), a roller and cleansing fluid. A complete fingerprint stand may be obtained from any fingerprinting supply house. Fingerprints should be taken on Department of Justice Form FD-249.

(3) There are two types of impressions involved in the process of taking fingerprints on Form FD-249: Individual fingers and thumbs ("rolled" impressions); and simultaneous prints of all the fingers of each hand and then the thumb, without rolling ("plain" or "fixed" impressions).

(4) In preparing to take a set of fingerprints, a small daub of ink should be placed on the inking plate and thoroughly rolled until a very thin, even film covers the entire surface. The subject should stand in front of and at forearm's length from the inking plate. The operator should stand to the left of the subject when printing the right hand, and to the right of the subject when printing the left hand.

(5) *Rolled Impressions*—Ink and print each finger separately beginning with the right thumb and then, in order, the index, middle, ring, and little fingers. Place the bulb of the finger upon the inking plate and roll the finger from one side to the other. In order to take advantage of the natural movement of the forearm, the hand should be rotated from the awkward to the easy position (rolled away from the center of the subject's body). Care should be exercised so the bulb of each is inked evenly from the tip to below the first joint. By pressing the finger *lightly* on the card and rolling in exactly the same manner, a clear rolled impression of the finger surface may be obtained. The subject should be cautioned to relax and refrain from trying to help the operator by exerting pressure as this prevents the operator from gauging the amount of pressure required.

(6) *Plain Impressions*—Press all the fingers of the right hand lightly upon the inking plate, then press simultaneously upon the lower right corner of the card in the space provided. The left hand should be similarly printed, and the thumbs of both hands should be inked and printed, without rolling, in the spaces provided.

(7) In order to ensure clear impressions, the operator should be aware that:

(a) The use of stamp pads or writing ink is unsatisfactory and will invariably result in illegible prints.

(b) The recommended printer's ink, if unevenly distributed on the inking plate, will result in blotches and blank areas.

(c) Fingers should be wiped clean before inking as moisture or other foreign substance may cause blemishes in the prints.

(d) Incomplete inking or rolling of fingers results in incomplete prints.

(e) Slipping of fingers while being rolled causes blurred and indistinct patterns.

(8) The following precautions should be taken by the operator:

(a) Beware of reversing (printing left fingers or hand in the spaces provided for the right fingers or hand), or double printing (re-rolling finger back over the impression in a mistaken effort to make it more legible).

(b) Be sure impressions are recorded in correct sequence.

(c) Be sure to make a notation in any space left blank because of an amputation.

396 (1-18-80)

9781

Juveniles

(1) Sections 5031 to 5037, Title 18, United States Code, set out the limitations concerning the arrest, trial, and punishment of juvenile delinquents. The special agent, as a general rule, will not have occasion to arrest a juvenile for violation of an internal revenue law.

(2) If a special agent does make such an arrest, he/she must comply with the procedure directed by the Code, as follows:

"Whenever a juvenile is arrested for an alleged violation of any law of the United States, the arresting officer shall immediately notify the Attorney General.

"If the juvenile is not forthwith taken before a committing magistrate, he may be detained in such juvenile home or other suitable place for detention as the Attorney General may designate for such purposes, but shall not be detained in a jail or similar place of detention, unless, in the opinion of the arresting officer, such detention is necessary to secure the custody of the juvenile, or to insure his safety or that of others.

"In no case shall such detention be for a longer period than is necessary to produce the juvenile before a committing magistrate." [18 USC 5035]

(3) The notification required by the above section of the Code should be made through the Chief, Criminal Investigation Division, to the office of the United States Attorney in the judicial district in which proceedings will be held.

397 (1-18-80)

9781

Publicity**397.1** (1-18-80)

9781

General

(1) The District Director or his/her designated representative is authorized to release information to the public regarding criminal actions, provided the disclosure is not prohibited by law, court rule or order, or Service policy, P-1-185.

(2) For all news releases, the Chief, Criminal Investigation Division or his/her designee will provide the district Public Affairs Officer (PAO) necessary information to be included in a news release.

(3) The PAO is responsible for preparation of draft news releases and their clearance.

(4) All news releases will be prepared for attribution to the U.S. Attorney.

(5) These instructions are not intended to alter the Service policy contained in Policy Statement P-1-183 of endeavoring to obtain optimum news coverage in its enforcement activities by providing general information concerning the work of various divisions, supplying information on a request which is a matter of public record, and cooperating with and furnish-

ing information to U.S. Attorneys for release to the news media.

(6) Under no circumstances will Criminal Investigation personnel release to the public the following types of information:

(a) Observations about a defendant's character.

(b) Statements, admissions, confessions, or alibis attributable to the defendant or the refusal or failure of the accused to make a statement.

(c) References to investigative procedures, such as fingerprints, polygraph examinations, ballistic tests, or laboratory tests, or to the refusal by the defendant to submit to such tests or examinations.

(d) Statements concerning the identity, credibility, or testimony of prospective witnesses.

(e) Statements concerning evidence or argument in a case, whether or not it is anticipated that such evidence or argument will be used at trial.

(f) Any opinion as to the accused's guilt or the possibility of a plea of guilty to the offense charged, or the possibility of a plea to a lesser offense.

397.2 (1-18-80)

9781

Raids

(1) At the conclusion of a waging or other raid, the Service may release to the news media only that information that is contained in the search and/or arrest warrant. The release of such information may be made by the raid leader in response to on-site media inquiries. Other media inquiries should be referred to the district Public Affairs Officer. Consistent with the Department of Justice guidelines, the following may be released to the news media unless there are specific limitations imposed by law or court order:

(a) The defendant's name, age, residence, employment, marital status, and similar background information.

(b) The substance or text of the charge.

(c) The identity of the investigating and/or arresting agency and the length or scope of the investigation.

(d) The circumstances immediately surrounding an arrest, including the time and place of arrest, resistance, pursuit, possession and

use of weapons, and a description of physical items seized at the time of arrest.

(2) The information which is released should include only incontrovertible, factual matters, and should not include subjective observations. Also, where such information would be highly prejudicial and where release would serve no law enforcement function, it will not be made public. Information concerning a defendant's prior criminal record will not be made public by Service officials. Media requests for information about a wagering or other raid which go beyond the contents of the warrant will be referred to the U.S. Attorney's office. The information that is in the affidavit for the search and/or arrest warrant is not to be considered part of the warrant and thus may not be released to the news media by Service officials.

397.3 (1-18-80) **Pre-trial Actions**

9781

(1) News releases related to pre-trial actions such as indictments and filing of criminal informations will be prepared only upon the specific request of the U.S. Attorney on a case-by-case basis. These news releases must be cleared within the district office in accordance with such procedures as the District Director may establish, and submitted to the U.S. Attorney for approval and distribution to the news media. At the request of the U.S. Attorney, the IRS district office will assist with the distribution of releases to the news media. To avoid any misunderstanding regarding the source of such releases, they will not be prepared on IRS mastheads, or mailed in IRS envelopes.

(2) Media requests for information about a pretrial action which go beyond the contents of issued news releases will be referred to the U.S. Attorney's office.

(3) IRS officials will not participate in press conferences or otherwise serve as a spokesperson in connection with pretrial actions. (See Policy Statements P-1-183.)

398 (1-18-80) **Fugitives**

9781

(1) In order to assist in the apprehension of fugitives from justice who were the subject of investigation by Criminal Investigation, procedure is provided for issuance of Wanted Circulars (Publication 269) for felony fugitives. For purposes of initiating Wanted Circulars, a fugi-

tive from justice is defined as a person against whom some form of criminal action has been taken, such as the return of an indictment, filing of a complaint or information, or a conviction, and who has fled the jurisdiction to escape prosecution or to avoid serving a sentence.

(2) When it is determined that a taxpayer is a fugitive, the procedures in text 335 of the Handbook will be followed to request an entry be made to the Treasury Enforcement Communications System (TECS) and the National Crime Information Center (NCIC). At the same time a report should be prepared by the Chief, Criminal Investigation Division and immediately forwarded to the Director, Criminal Investigation Division, through the ARC (Criminal Investigation). A Wanted Circular for felony fugitives will be prepared for circulation throughout the country. The report will include the following items and information concerning the wanted person, to the extent they are available.

(a) Name and aliases, last known address, social security number(s), and a complete physical description, including any identifying scars, marks or tattoos.

(b) Date and place of birth, nationality, and information regarding naturalization or foreign citizenship.

(c) Criminal record, fingerprint classification, police and FBI identification numbers, and customary employment or occupation.

(d) Date, place and nature of legal action that is the basis for apprehension, including the applicable criminal statutes.

(e) Name and title of person holding warrant for arrest or commitment papers who is to be notified in the event of apprehension.

(f) Specific comment should be made as to whether the wanted person should be considered dangerous and whether the wanted person is known to carry arms as a matter of practice.

(g) The most recent available photograph, in duplicate. The police type of photograph showing front and profile views is preferred for this purpose. Glossy print photographs, rather than a newsprint photograph, should be submitted.

(h) In lieu of fingerprints or fingerprint classification, clear photographs of the wanted person's customary signature, or, if that is not available, a sample of the wanted person's handwriting, should be submitted in duplicate.

(i) Any other information deemed appropriate that might aid in the wanted person's apprehension.

(3) The report shall be prepared in quadruplicate; the original and two copies forwarded to the ARC (Criminal Investigation) who shall in turn transmit the original and one copy to the Director, Criminal Investigation Division, National Office; one copy shall be retained in the district case file.

(4) Wanted Circulars are prepared and distributed by the National Office direct to law enforcement officials from mailing lists furnished by the ARC (Criminal Investigation).

(5) Such circulars will be distributed from the National Office to appropriate field personnel of Criminal Investigation, Examination and Collection at both regional and district levels. The ARC (Criminal Investigation) of the region originating a request for Wanted Circulars will be furnished a sufficient number of additional unaddressed circulars to enable him/her to intensify the local search for criminals wanted. A file of Wanted Circulars will be maintained on a current basis in all Intelligence field offices as well as in the offices of ARC's (Criminal Investigation).

(6) Distribution of Wanted Circulars should be limited to law enforcement personnel.

(7) When information is received in any Criminal Investigation office that a wanted person has been apprehended, for any reason whatsoever, the arresting authorities should be requested to hold the fugitive for further action by the IRS or the person who is named in (2)(e) above. The Criminal Investigation official who learns that a fugitive has been apprehended shall telephone or telegraph the Chief, Criminal Investigation Division, of the district wherein the fugitive is wanted, and the Director, Criminal Investigation Division, National Office, in order that the person holding the warrant or commitment papers can be immediately notified of the detention and steps taken to cancel the Wanted Circular regarding the fugitive. In those instances where the above officials are notified telephonically, the notifying Criminal Investigation official will follow up with a written notification to them. The special agent participating in, verifying, or making the arrest will promptly submit Form 1327, Report of Legal Action. The Chief, Criminal Investigation Division, of the district wherein the fugitive wanted shall follow up to ensure appropriate handling of the fugitive. Thereafter, he/she shall submit a brief report through channels to the Director, Criminal Investigation Division, National Office, detailing the action taken.

(8) When the Chief of a district wherein the fugitive is wanted learns that the fugitive is located in another district he/she will immediately notify the Chief of the other district as to the location of the fugitive, and will furnish all available information necessary to the apprehension of the fugitive. Where such notification is made by telephone with the request that the fugitive be arrested, confirmation should immediately follow by teletype so that the appropriate United States Attorney may have a documented request upon which to act. After the arrest has been made, the procedure in (7) above will be followed.

(9) See also IRM 9376.1 and 9539.(10). For principals who flee or intend to flee the country, see IRM 9376.2.

(10) When a fugitive has been apprehended, TECS and NCIC entries should be canceled.

3(10)0 (1-18-80)

9781

Fraud Investigation Assignments

3(10)1 (1-18-80)

9781

Nature of Violations

Fraud investigations include all criminal allegations against any person or entity relating to internal revenue taxes (except wagering, narcotics, alcohol, tobacco, and certain firearms taxes) in which defrauding the revenue is a prime factor. Examples are: attempted evasion; willful failure to collect or pay over tax, file required returns, supply information or keep records; conspiracy to commit such acts; and aiding, abetting or counseling such acts. They usually involve fraudulent documents, returns, certificates, lists, offers in compromise, accounts, briefs or claims, false statements, including those made under oath or under penalties or perjury, withholding tax (Forms W-2, 941) or Forms W-4.

3(10)2 (1-18-80)

9781

Types of Assignments

(1) The types of assignments, the objectives of the intended investigations, and the conditions under which they are investigated are as follows:

(a) Information Item

1 To assist in evaluation, the Chief, Criminal Investigation Division or his/her designee, who in no event will be below the group manag-

er level, may assign an information item to a special agent for limited inquiries which include:

- a Scrutiny of tax returns or IRS files.
- b Discussion with the referring officer.
- c Interviews with the original informant, if any, in the case.
- d Inquiries at Federal, State and local governmental agencies, including, but not limited to: law enforcement bodies; crime commissions; regulatory and licensing branches; motor vehicle registration; and real estate records.
- e Inquiries at state and local taxing authorities.

f Contact with the taxpayer by mail to verify his/her filing record. Letter 964(DO), formerly L-210, will be used for this purpose. Publication 876, Privacy Act Notification, should be furnished simultaneously.

2 In making the inquiries enumerated above, the special agent is allowed to disclose the name of the taxpayer for identification purposes in an effort to secure information that is directly tax related and necessary to the administration of the tax laws.

(b) *Investigations*—To gather, through investigation, pertinent evidence to prove or disprove the existence of a violation of the law or regulations within Criminal Investigation jurisdiction. Specific investigative action will be taken to promptly determine whether criminal potential exists. Investigations may be investigated independently or in cooperation with the Examination or Collection Division.

(2) The circumstances determining "joint investigations" and the responsibility of special agents and cooperating officers in such investigations are discussed in 3(10)5.

3(10)3 (1-18-80) 9781 Origin of Assignments.

3(10)3.1 (1-18-80) 9781 General

(1) Much attention is devoted to allegations before assignments are made to special agents. The Chief, or the Chief's designated representative, evaluates and screens incoming information to determine if assignment to a special agent is warranted. Only those cases warranting the investigative effort of a special agent are assigned. The special agent is assured that the assignment is worthwhile in the judgment of his/her supervisors.

(2) Assignments to special agents generally originate with information items, other information, and referrals for potential fraud cases initiated in other divisions—Examination, Collection, and EP/EO. Information generating assignments are controlled through the centralized evaluation and processing of information items system (CEPIIS) at the Service Centers. The Criminal Investigation function is represented at the Service Centers by the Criminal Investigation Branch.

3(10)3.2 (1-18-80) 9781 Information Items and Other Information

3(10)3.21 (1-18-80) 9781 Definition

(1) "Information Items" are tax related communications and information received alleging or indicating a violation within the investigative jurisdiction of the Internal Revenue Service.

(2) "Information Items" to be evaluated and processed at the service center include:

- (a) letters or other correspondence from informants that are tax related,
- (b) memorandums of conversations or interviews with informants that are tax related,
- (c) tax information from other government agencies,
- (d) mutilated currency reports,
- (e) data regarding tax violations developed or received by employees of the Internal Revenue Service,

(f) ADP and service center generated data concerning potential tax violations where a return has been requisitioned, or other investigative steps are taken to obtain further information after receipt of the listing, and

(g) other tax related data as appropriate.

(3) "Other information" in the Master Alpha Index which is a part of this centralized system at the service center includes:

- (a) referrals from Examination, Collection, EP/EO and Appellate;
- (b) open Criminal Investigation investigations;
- (c) Currency Transaction Reports (Forms 4789);
- (d) Currency or Monetary Instrument Reports (Forms 4790, U.S. Customs Service Form);
- (e) U.S. Customs Seizure Reports;
- (f) U.S. Customs Currency Violation Investigations;

(g) information gathering cases and projects;

(h) DEA, Class 1 information items;

(i) SEC Project information items;

(j) referrals from the Questionable Refund Program (QRP); and

(k) closed criminal investigations for the past 10 years.

(4) See IRM 9267.3:(15) concerning the preparation of an information item which contains grand jury information.

3(10)3.22 (1-18-80)

9781

Processing of Information Items

(1) The Chief, Criminal Investigation Division, or his/her designate may initially screen information items received in the district to identify items requiring immediate attention and items appearing to have surface potential. However, during this screening process, inquiries as stated in text 3(10)2:(1)(a) may not be made.

(2) If the Chief, Criminal Investigation Division, or his/her designate, wishes to have the item returned to the district for further evaluation, or has local knowledge regarding taxpayers mentioned in information items which would assist the evaluators at the service center, such information may be attached to the appropriate item. For those items which the Chief or designate wishes to have returned to the district, he/she may forward the original information item to the service center for processing and keep a photocopy for immediate assignment to a special agent for him/her to make limited inquiries as provided in text 3(10)2:(1)(a).

3(10)3.23 (1-18-80)

9781

Evaluation of Items Having Criminal Potential

(1) The Chief, Criminal Investigation Branch, or his/her designate will perform an initial evaluation of all "Information Items" and appropriate items of "Other Information" to identify those with criminal prosecution potential.

(2) Photocopies of those items evaluated as having criminal prosecution potential will be forwarded to the Chief, Criminal Investigation Division in the district where the taxpayer resides. Appropriate returns, microfilm research and/or transcripts will be forwarded to assist the Chief, Criminal Investigation Division in his/her final evaluation of such items. In addition, queries should be made by the Chief, Criminal Investigation Branch to the Treasury Enforcement Communication system to determine whether

other Treasury agencies have ongoing or closed investigations or other information which might have tax consequences and to the National Crime Information Center to determine criminal history for use in preparation of prosecution or withdrawal reports.

(3) The receiving Chief, Criminal Investigation Division will, within sixty (60) workdays from receipt, determine if he/she will select the item for investigation. All information items will be evaluated by the Chief, Criminal Investigation Division or his/her delegate, without regard to available staff power, solely on the basis of possible development of successful prosecution case within Criminal Investigation jurisdiction.

(4) If the Chief, Criminal Investigation Division elects to begin an investigation in the Criminal Investigation Division, he/she will prepare and process Form 4930 in accordance with IRM 9570, Case Management and Time Reporting System Handbook.

(5) If the chief, Criminal Investigation Division, after his/her evaluation elects to reject the item, he/she will return it to the chief, Criminal Investigation Branch.

3(10)3.3 (1-18-80)

9781

Potential Criminal Cases Initiated in Audit, Collection, and EP/EO

3(10)3.31 (1-18-80)

9781

Indications of Fraud Reported to Criminal Investigation Function

(1) If an examiner during the course of any examination, a revenue officer, or an EP/EO specialist in the performance of his/her duties, discovers firm indications of fraud, he/she will suspend his/her activities at the earliest practicable opportunity without disclosing to the taxpayer, his/her representative, if any, or his/her employees the reason for such suspension.

(2) An examiner who discovers indications of fraud will prepare a report of his/her findings, utilizing Form 2797, Referral Report for Potential Fraud Cases. The report will be forwarded through channels to the district office Chief, Examination Division, who will add his/her comments and will transmit the original and two copies to the Chief, Criminal Investigation Division.

(3) A revenue officer or a Collection Office function representative who discovers indica-

tions of fraud will be responsible for preparation of a report of his/her findings, utilizing Form 3212, Referral Report of Potential Fraud Cases. The report will be forwarded in an original and two copies, through channels, to Chief Criminal Investigation Division.

(4) An EP/EO specialist who discovers indications of fraud will be responsible for a report of his/her findings, utilizing Form 2797. The report will be forwarded through channels to the Chief, EP/EO, who will add his/her comments and will transmit the original and two copies to the Chief, Criminal Investigation Division of the district in which the taxpayer is located.

3(10)3.32 (1-18-80)

9781

Action by Criminal Investigation Function

(1) Criminal Investigation shall evaluate the referral from Examination, EP/EO or Collection. If retained, it shall be handled in all respects as an investigation by either assignment to a special agent for appropriate action (including any needed discussions with the referring officer), or by placing it in a pool of unassigned cases. Within 15 workdays after receipt of the referral, the Chief, Criminal Investigation Division, shall inform the appropriate Division Chief, whether the referral has been declined before investigation; and, if so, the reasons therefor; or accepted for investigation.

(3) If no investigation is proposed by Criminal Investigation, Examination or EP/EO may resume its examination or Collection its collection activities. Thereafter, the EP/EO specialist examiner or revenue officer will remain alert for new indications of fraud. Should they develop, the case will again be referred to Criminal Investigation, in accordance with the procedure outlined above.

(4) Upon receipt of the notification from Criminal Investigation that the referral has been accepted and assigned for investigation and request is made for the assignment of a cooperating officer, the Chief of the referring division will assign to the investigation either the referring or another officer, who, in company with the special agent, may continue the examination of the taxpayer's books and records or assist in making other pertinent inquiries relative to the indications of fraud on which the referral is based.

3(10)3.31

MT 9781-1

IR Manual

(5) If the evaluator of a referral proposes to decline it, he/she should discuss his/her reasons for the proposed declination with the individual making such a referral or that individual's supervisor prior to writing the closing report. If the referral is declined, a copy of the special agent's closing report will be furnished the referring division. The Criminal Investigation action will also be noted on the original of the referral form.

(6) Delay in the handling of cases in which an allegation of fraud has been made is disadvantage to the Government, especially in matters affecting collections. Speedy determination should be made as to those cases warranting investigation to the end that conclusion of the civil aspects of a case is not unnecessarily delayed.

3(10)4 (1-18-80)

9781

Investigations

(1) The Chief, Criminal Investigation Division, or his/her delegate, will select for investigation all information items which, upon evaluation and screening, are deemed to warrant inquiries beyond those enumerated in text 3(10)3.22:(4). It is not necessary that each case be assigned to a special agent for investigation immediately upon selection.

(2) When available resources do not permit an active investigation to be undertaken immediately due to other priorities, consideration should be given to placing the case in a pool of unassigned cases controlled by the Chief's office.

(4) All cases assigned for investigation shall be subject to sufficient investigative inquiry to support the disposition of the case, except when closed for lack of resources.

(5) An investigation may, as appropriate, be conducted as a joint investigation with either the Examination or Collection Activity.

(6) Case numbers will be assigned in accordance with IRM 9570, Case Management and Time Reporting System Handbook.

3(10)5 (1-18-80)

9781

Joint Investigations

3(10)5.1 (1-18-80)

9781

Circumstances Determining Joint Investigations

Joint investigations are conducted by special agents in cooperation with representatives of other divisions of the Internal Revenue Service (revenue agents and revenue officers). Cases are usually investigated jointly with the Examination Division when false returns are filed or when there is a willful failure to file returns; with Collection when there is a willful failure to pay tax.

3(10)5.2 (1-18-80)

9781

Responsibilities of Participants in a Joint Investigation

(1) A joint investigation is to be *jointly* conducted through mutual *cooperation* by representatives of two or more divisions. The special agent is responsible for the development of the case and the ad valorem additions to the tax for civil fraud, negligence, and delinquency (except those concerning tax estimations) unless and until he/she withdraws from the case. The special agent is also responsible for the method of procedure and conduct of the investigation. The cooperating revenue agent is responsible for the audit features, and the revenue officer for the collection features. Because of the varied criminal charges that may attach to taxpayers' actions involving one or more of the other divisions and since these features are commingled in most cases, it is impractical to attempt to separate such features by arbitrary rules applicable to every case. The following guidelines, which are intended to be flexible, define the features of joint investigations:

(a) *Criminal Investigation features* are those activities of developing and presenting admissible evidence required to prove criminal violations and the ad valorem penalties for civil fraud, negligence, and delinquency (except those concerning tax estimations) for all years involved in cases jointly investigated to completion. This includes obtaining testimony of witnesses and the taxpayer; conducting necessary surveillance, undercover work, searches, seizures of property used or intended for use in violating the internal revenue laws, and arrests; and properly documenting pertinent records and transactions.

(b) *Examination features* are those activities of examination and verification of accounts on which such liabilities are based. These include the items required for the audit features in

a nonprosecution case, such as reconciliation of the taxpayer's records with tax returns, test checking book entries, inspecting canceled checks, reconciling control accounts with subsidiary accounts, transcribing such accounts or parts of accounts necessary for disclosing bases for adjustments to tax liability, determining and substantiating tax and accounting adjustments having no significant effect on the criminal aspects of the case, and computation of the basis for tax liabilities, including such computations when the taxpayer has no books or records.

(c) *Collection features* are those activities of receiving tax returns and related documents and obtaining payment of taxes. This includes the collection of delinquent accounts through distraint, seizure, levy and other means, canvassing and securing, or preparing delinquent returns.

(2) The special agent is charged with the responsibility for the method of procedure and conduct of joint investigations. This is because of the importance of a criminal case from the deterrent standpoint to buttress voluntary compliance, and the gravity of possible criminal punishment. The criminal aspect is predominant. To prevent prejudice to the criminal features of a case, the special agent, unless and until he/she withdraws from the case, or until the criminal aspects of the case are concluded, will be responsible for the following determinations:

(a) The method to be used for criminal purposes in determining the tax basis, such as the determination of income in an income tax case by the net worth or specific item approach, or by a dual determination where it has a significant effect on the criminal case (the cooperating officer in his/her report may, in addition to the computation for criminal purposes, present an alternative method for computing the civil liability);

(b) The identification of those adjustments upon which a recommendation for criminal prosecution will rest and/or those which will constitute the basis for a recommendation for penalty additions to the tax;

(c) The preparation and issuance of summons (Form 2039); and

(d) The timing and priority of investigative actions in the case.

(3) Since many of the activities performed during joint investigations, particularly with Ex-

amination personnel, are commingled, joint or similar duties and responsibilities exist. To prevent duplication or overlapping of effort in joint investigations, the special agent will determine the nature and extent of participation by the cooperating officer in the following activities:

(a) Assisting in the interview of the principal and witnesses;

(b) Accounting reconstruction of tax bases, including the determination of the starting point for a net worth computation and third-party inquiries, including cases where the taxpayer has no books of account;

(c) Verification of the principal's records by comparison with records of third parties;

(d) Examination or transcription of records, accounts, and other relevant documents, including public records; and

(e) Preparation of inventories of records and/or assets, such as listing the principal's records or the contents of a safe deposit box.

(4) Decisions concerning whether the cooperating officer or the special agent should perform a specific task or part of a joint investigation, or whether they should perform it together, and the extent of participation of either officer must be on the basis of teamwork, mutual cooperation, and the best interests of the Service in the light of the particular circumstances of the case.

3(10)6 (1-18-80)

9781

Requesting Returns and Transcripts of Accounts

3(10)6.1 (1-18-80)

9781

Returns and Related Tax Information

Form 2275, Records Request, Charge and Recharge, is a two-part form and has two formats (Exhibit 300-24). Form 2275 is to be used by service centers, regional offices, National Office and Office of International Operations; and Form 2275-DO by district offices. Prepare a separate request for each taxpayer's records and for each tax period requested.

3(10)6.2 (1-18-80)

9781

Transcripts of Accounts

1 Form 4338, Information or Certified Transcript Request (Exhibit 300-25), and Form 4338-A, IMF Information or Certified Transcript Request (Exhibit 300-25 Cont. (3)) will be used

by Criminal Investigation personnel to request both regular and certified transcripts of account and will be forwarded to the service center for the district where the return was filed. Form 4338 will be used for BMF, IRAF, RMF, EPMF and NMF requests, while Form 4338-A will be used for IMF requests only. All requests for transcripts of ADP accounts will be forwarded to the service center servicing the district requesting the transcript. If there is an urgent need for a transcript and there is not enough time for normal processing, telephone or teletype requests may be made directly to the service center.

(2) The service centers will furnish the requested ADP transcripts on Form 4303, Transcript of Account (see Exhibit 300-26). Form 4340, Certificate of Assessments and Payments, will be used by the service centers to answer non-ADP requests (see Exhibit 300-27).

3(10)7 (1-18-80)

9781

Commencing Fraud Investigations

(1) When beginning a fraud investigation, the special agent's first action should be to scan the file and determine the objective. For example, is it an investigation of an information item subject to limited inquiries, such as: interview with the informant, if applicable; check of Service files; scrutiny of tax returns; discussions with the referring officer, if applicable; or other inquiries not requiring disclosure of the taxpayer's identity, such as inspection of public records, etc.? In addition, the taxpayer may be contacted by letter to verify his/her filing record. Or, is it an investigation on which the expenditure of extensive and detailed efforts are already authorized? All initial assignments have as their objective the development of a potential criminal case. This involves deciding the specific criminal statute or statutes alleged to have been violated, by whom, when, where, and by what means; and understanding clearly the elements of the offense. The special agent should be continually alert for circumstances such as the death or sudden serious illness of the principal, his/her absence from the jurisdiction of United States courts, inadmissible evidence because of earlier contamination, or other factors which may make the principal immune to criminal prosecution as a practical matter.

(2) The second step normally taken is to begin gathering facts. At this point the special agent commences a file by making a record—whether it be informal notes for his/her own information only or formalized recording of investigative actions. A file should be started by listing the principal's correct full name, address at the time of the alleged offense, present whereabouts, and other information available from the assigned file and from readily available sources, such as telephone directories, city directories, etc. The principal's history and other pertinent information, similar to that tabulated in text 633.3, should be determined insofar as possible from readily available sources. Frequently the Criminal Investigation files contain information about the principal which was accumulated in connection with an entirely different matter, i.e., as an informant, as an enrolled practitioner, CTR reports, newspaper clippings, or other tax related background files such as closed files on prior investigations, collateral inquiries by other districts, and the like. The special agent should ensure that a files check has been made and that he/she is aware of information available from Criminal Investigation files before making inquiries outside the division. This aids the agent in making intelligent inquiries and avoiding embarrassing incidents otherwise likely to occur.

(3) The next effort to gather information will be guided by the particular assignment. Normally the next step is to explore and develop fully the original source of information, e.g., interview the author of a written communication. However, it is sometimes desirable that the special agent possess additional tax related background information before conducting the interview. Such additional data might be available from tax returns involved; the files of other divisions of the Service (such as prior revenue agents' reports possessed by Examination Division), a physical inspection of geographical area, or other sources mentioned in text 330. The decision concerning which source of information should be resorted to, when, and the desired extent of initial efforts are discussed in text 3(10)8.

(4) The initial phase of gathering information is completed when the assigned file is closely examined, appraised, and evaluated; Criminal Investigation files have been searched for correlation purposes; pertinent files possessed by other divisions of the Service have been examined to the extent the particular allegation warrants; the indicated research and consultations with supervisors and employees of the Service who possess pertinent personal knowledge have been completed; and the source of the original information has been fully explored. These actions will constitute the completion of an investigation of an "information item" and may even comprise the entire investigation. In such instances, the special agent should weigh the information gathered, reach a tentative decision, evaluate the decision, and then take action by report (oral or written, as appropriate) to his/her superior.

3(10)8 (1-18-80) **Investigations**

9781

3(10)8.1 (1-18-80) **Planning and Conducting of Investigations**

9781

(1) Investigations are detailed criminal inquiries to gather all the pertinent evidence to prove or disprove the existence of a violation within the jurisdiction of the Criminal Investigation Division. Such investigations involving fraud are usually conducted jointly with the Examination or Collection Division (text 3(10)5.2 contains a discussion of joint investigation relationships). They shall be commenced and concluded as soon as possible because of the statute of limitations, the danger of witnesses becoming unavailable or unreliable, the possibility that records and other evidence may become lost or destroyed, and the effect on the civil aspects of the case, especially collection.

(2) Investigations conducted jointly with other divisions are supervised jointly by the group manager of the cooperating agent and the group manager of the special agent (where there is no Criminal Investigation group manager, the Chief, Criminal Investigation Division). Both group managers should exercise sufficient control and follow-up to ensure the prompt completion of the investigation. The District Director, at his/her discretion, may prescribe the use of work plans, investigation

status reports, and joint case review procedures in any joint investigation in his/her district. When the District Director prescribes the use of such work plans, status reports, and supervisory case reviews, he/she will be responsible for providing applicable detailed procedures.

(3) In formulating a plan for a fraud investigation, the special agent should first look to the areas which are most determinative. For example, the special agent should obtain from the referring officer complete information relating to all occurrences in the case from its inception to the date of this interview. Particular attention should be given to statements made by the principal to, or in the presence of, the examining officer. If the principal has made admissions or has given false or misleading statements that can be proved or disproved, the cooperating officer should make a written memorandum of the details while the facts are still fresh in his/her mind.

(4) The points covered during the special agent's interview with the examining officer will vary depending on the particular type of case and the specific allegations. However, at the conclusion of the interview, the special agent should know the answers to the following representative questions to the extent that they are pertinent and are within the knowledge of the examining officer.

(a) *Origin*—What started the examination? When was initial assignment made? Scope and purpose of initial assignment?

(b) *Records of the Internal Revenue Service*—Are required returns filed? Which original returns are on hand? Are other returns needed? Location and availability of additional returns? (All subsequent returns should be requisitioned.) Which is the better alternative for unavailable returns: retained copies or Certificates of Assessments and Payments? What do the available returns show concerning: who prepared them, what they are based on, who signed them, and the result of analyses made?

(c) *Records of the principal*—What records were initially maintained? Are records in existence? Are these records available? Have available records been reconciled with returns? If no, can the records be reconciled with returns? Has an inventory of available records been made? Who kept the records? Under what circumstances and where were the records maintained? How much detailed information is

shown by the records? What supporting records are available, e.g., canceled checks, duplicate deposit tickets, invoices, accounts, shipping tickets, etc.? If available records are incomplete, what is the explanation for missing portions? Have excerpts of records, such as suspected accounts, been transcribed?

(d) *Records of third-party witnesses*—What other records have been determined pertinent? To what extent are they available? What was disclosed by other records examined thus far? Are transcripts or workpapers available and properly identified?

(e) *Allegations or basis of suspicions*—Is there a tax deficiency involved in the allegation? What are the estimated deficiencies and years involved? To what extent are estimated deficiencies made up of technical items? Are the alleged wrongful acts those of commission or omission? Is collection of tax liability in jeopardy? Are there known offsets, such as shifts of income between years, loss carry-forward or carry-back? What methods of determining taxable income have been used by the cooperating officer? What other methods of determining taxable income are feasible?

(f) *Personal contacts*—Has there been any meeting with the principal? What are the exact circumstances under which conversations occurred and records were made available? Is there any reason to anticipate a subsequent defense motion to suppress evidence? What was the principal's attitude with respect to cooperation? Has the principal been asked to explain any apparent discrepancies? What explanations or defenses are indicated? Have there been any discussions regarding settlement of the case? Similar details should be covered with respect to personal contacts with principal's present employees, accountant, and attorney. Is the principal or his/her representatives aware that the case has been referred to the Criminal Investigation Division for consideration? Avoid any deceptions as to the status of the case and the respective roles of the participating agents. After interviewing the examining officer and reappraising the available information accumulated thus far, the special agent should be able to determine whether to terminate the investigation or whether specific issues remain to be resolved before determining disposition.

(5) *Planning*—The “planning” consists of determining what information is needed, the relative importance of the desired data, the sequence believed best in making inquiries, the available sources of information, and which of the various alternative sources is best in the light of all circumstances involved.

(a) *Deciding which inquiries to make first*—The information needed is determined by the particular type of case and the specific allegations. Which inquiry should be made first is guided by the following considerations: Which will have to be made before conclusion? Which are expected to be more incisive with respect to broad areas or general issues? Which will confirm whether or not other contemplated inquiries are necessary? Which will most likely reveal leads?

(b) *Deciding which source of information is best*—Once the desired inquiries are itemized in their respective order of relative importance and planned sequence, the possible sources of information should be studied to decide the alternatives. The perfect source of information seldom, if ever, exists. Most sources will have disadvantages in the quantity and quality of information available, and also in the possible detrimental effect the inquiry may have on the case. Desirable goals to be considered in deciding on alternative sources are:

- 1 is complete, concise, and accurate information readily available?
- 2 will the response likely be immediate?
- 3 is the source proximate geographically?
- 4 is it economical?
- 5 is it convenient to the agent?
- 6 is it convenient to the person to be interviewed?
- 7 will a minimum of legal compulsion be required?

(c) Detrimental effects to be avoided are:

- 1 unnecessary embarrassment to the principal.
- 2 needless disclosure of the Government's affairs or information of a confidential nature.
- 3 identification of informants.
- 4 premature disclosure of the course of investigative action to the principal and others.

(6) The question of when the special agent should initially meet the principal should be decided after considering the advantages of both early and delayed interviews.

(7) In any event, whenever the special agent first officially meets with the subject of an inves-

tigation, he/she should be introduced as “Special Agent, Internal Revenue Service,” and will produce his/her credentials for examination. He/she will state that, as a special agent, one of his/her functions is investigating the possibility of criminal violations of the Internal Revenue laws, and related offenses. There should be no misrepresentation or concealment. The special agent will advise the subject of his/her constitutional rights as required by IRM 9384 and any related Manual Supplements. (See text 342.132) A prerequisite to interviewing the principal, his/her representatives, or his/her current employees is that the investigator possess the original returns involved if any were filed during the pertinent period (exceptions are upon written approval of the Chief, or for cases where investigation is extended to additional years for which no return is available.) Also, all interviews with the principal should be made with at least one other Government representative as a witness.

(8) The special agent's prompt determination in the early stages of the investigation as to what records of the taxpayer are in existence, whether they are available, whether they can be reconciled with returns, etc., will resolve which major kind of possible inquiry are appropriate. In selecting the primary method of proving income for criminal purposes, the special agent should first determine whether the required elements of the basic theory are susceptible to proof before beginning to develop evidence under that method. As an illustration, it should first be determined in a proposed net worth computation that it is possible to establish a firm starting point and cutoff point and that income can be allocated to specific years within the period before gathering documentary evidence to prove known assets, liabilities, and nondeductible expenditures. Before documenting the minor facets of a proposed bank deposits computation, first determine that the basic theory is borne out by records. In short, the special agent should be tentatively satisfied with the whole before refining the parts. In refining the parts, it is essential that the special agent know the relationship and expected use of the product before further development. To copy large segments of records, analyze canceled checks, and the like, without any planned usefulness of the product is wasteful.

(9) The procedure in joint investigations is discussed in text 3(10)5.2, where the respective

functional activities are defined as Criminal Investigation features, Examination features, and Collection features; also the special agent's responsibility for the method of procedure is described and the joint duties and responsibilities of the participating officers are itemized. Determination as to whether the cooperating officer or the special agent should perform a specific task or part of a joint investigation, or whether they should perform it together, and the extent of participation of either officer therein must be on the basis of teamwork, mutual cooperation and the best interests of the Service in the light of the particular circumstances of the case. The following principles should be considered in making such determination:

(a) The special agent should be sufficiently familiar with the Examination or Collection features of the case and the cooperating officer sufficiently familiar with its criminal features to corroborate or complement each other's testimony, if necessary.

(b) Accounting and tax features, or collection activities, are usually the responsibility of the cooperating officer; developing and documenting evidence of intent is usually that of the special agent.

(c) Extensive documentation of adjustments required in a fraud case results in more detailed transcripts or extracts and more extended account verification than is required for the Examination features in an ordinary case.

(d) Often it is inefficient to have the special agent and cooperating officer continually working together on tasks which are normally the responsibility of either one of the officers. Duplication in the preparation of workpapers should be avoided; however, they may be reproduced to the extent necessary.

(e) The special agent is responsible for conserving the cooperating officer's time on a joint investigation and should avoid calling upon him/her unnecessarily for other than normal Examination or Collection functions. If, in making inquiries of third party witnesses, it is necessary to have two officers present, the services of another special agent should be utilized whenever practical. The cooperating officer should not be requested to participate unless his/her presence is required. On the other hand, both officers, i.e., the cooperating officer and the special agent, should usually be present when the taxpayer is interviewed or when the taxpayer's records are examined.

(f) The special agent should endeavor to plan the joint investigation with the cooperating officer in such a manner that the cooperating officer is engaged in the joint investigation in continuous periods of time without interruptions, as much as possible, rather than spasmodically. The cooperating officer should be informed as much in advance as possible of the plans for joint activities on the case and informed as soon as possible when his/her active participation is completed.

(10) There are many policies and procedures which the special agent must consider when planning and conducting an investigation. These are found primarily in IRM 9320 through 9380. Also, knowledge of possible sources of information, techniques to discover fraud, methods of proving income, law and evidence, etc., which are discussed elsewhere in this Handbook, all come into play during the planning and conducting of investigations. The ability to properly plan and conduct an investigation comes with experience, under the guidance of senior investigators and supervisors.

(11) When the special agent has completed his/her planned inquiries, he/she should evaluate the facts and evidence in the light of these considerations.

(a) Is the purpose of the investigation met? If it appears that criminal action is warranted, is there sufficient evidence concerning all elements of the offense?

(b) Are all questions material to the offense, or relevant to the matter involved, answered (who, what, when, where, how and why?)

(c) Are all implied questions answered? This involves questions not directly material to the main facts, but which are pertinent to a complete understanding of the case. For example, a witness' statement indicates that he/she paid the taxpayer \$50,000 but no evidence of the means of payment has been developed. Implied questions may also arise when unusual transactions are discovered but no explanation developed about the reason for the variation from the normal method of handling transactions.

(d) Are any further inquiries necessary?

(12) As a measure of relative success, special agents may review their cases after ultimate completion with the following questions in mind:

(a) How could the solution have been uncovered earlier?

(b) How could a concealed weakness have been unearthed before substantial investment of resources?

(c) How could a prejudicial action have been avoided?

(d) How could it have been foreseen before certain evidence was obtained that it would not be usable?

(e) How could the evidence available at one time and which subsequently became unavailable have been safeguarded?

3(10)8.2 (1-18-80)

9781

Control of ADP Operations

3(10)8.21 (1-18-80)

9781

Procedure

The Chief, Criminal Investigation Division, will notify the Service Center Director of any cases under investigation by Criminal Investigation in which control over ADP operations should be established. Form 4135, Criminal Investigation Control Notice, will be used for this purpose. (See Exhibit 300-28)

3(10)8.22 (1-18-80)

9781

Transaction Codes

(1) TC 910 will prevent the removal of tax filing or payment data from the Master File to the Retention Register. Such data is routinely removed relative to taxpayers whose tax module reflects no tax liability (zero balance) and no activity for a period of three years. TC 910 will permit Criminal Investigation to retain on the Master File all transactions on the file at the time the TC 910 is posted. At the time TC 910 posts, a complete transcript (entity and all tax modules) titled "INTEL-910" is generated and forwarded by the service center to district Criminal Investigation. In addition, a quarterly inventory listing will be generated and forwarded to Criminal Investigation (See IRM 9326.1:(7)). The list will provide Document Locator Numbers of all returns currently posted to the Master File relative to modules under TC 910 control. TC 910 should be useful in monitoring the filing of returns by certain taxpayers, such as racketeers and Special Enforcement Programs subjects.

(2) TC 914 will provide all of the controls described above for TC 910. In addition, TC 914 will provide the following:

(a) Prevent posting of all original input transactions addressed to the tax modules, except TC 910, 911, 912 and 019. (TC 019 is for

assigning ZIP codes.) A tax *module* is a record of tax data for a taxpayer, covering only one type of tax for one tax period.

(b) Permit posting of input transactions which have been reviewed and deemed acceptable for posting. This will also allow subsequent normal processing operations to proceed. For example, if a balance due return is permitted to be posted, a first notice to the taxpayer will be generated. If a refund return is permitted to be posted, a refund check to the taxpayer will be generated.

(c) Prevent a merge of modules if one or both modules are subject to TC 914.

(d) Prevent the computerized issuance of Form 5546, Examination Return Charge-Out, and prevents establishment of record on the AIMS data base.

(e) Prevent the issuance of TDI's or the operation of delinquency check procedures on the BMF and control the issuance of outputs under the operation of the Information Returns Processing (IRP) program and the IMF Delinquency Check.

(f) Terminate any further investigation by generating a Taxpayer Delinquency Investigation (TDI) recall for all tax modules in TDI status.

(g) Terminate any further collection action by preventing subsequent issuances of TDA's. If a tax module is in TDA status, the TDA will be placed in Inactive status.

(h) At the time of posting TC 914, produce a complete National Computer Center transcript of the tax modules titled "INTEL-914."

(i) Controls on the Individual Retirement Account File (IRAF) may be input directly; however, a TC 914 Control on the IMF will automatically place a control for the same taxpayer on the IRAF. The IRAF is a separate master file wherein voluntary contributions from self-employed persons to their own retirement accounts are recorded.

(3) TC 911 will reverse TC 910. It will also allow the issuance of TDA's for modules in Notice status, subject to a seven-cycle delay (about seven weeks). When the control has been terminated, the Chief, Criminal Investigation Branch at the service center will send the original Form 4135 together with any original documents, other than service center forms, that may have been retained in the account folder to the district Criminal Investigation office which requested TC 911.

(4) TC 912 will reverse TC 914. See IRM 9326.1 for the preparation of Form 4135 for input of TC 912.

(5) TC 916 will post to the tax module identified by the Master File Transaction Code (MFT) and will establish a Criminal Investigation freeze on the tax module and will provide for a Refund Schemes freeze on the module.

(6) TC 918 will post to the entity module and will establish a Criminal Investigation freeze on the entire account. It prevents refunds, credit elect and offset outs to BMF and IRAF.

(7) TC 915 posts to the module identified by the MFT and tax period of the incoming transaction and reverses only the refund freeze portion of the TC 916 and 918.

(8) TC 917 posts to the module identified by the MFT and tax period of the incoming transaction and reverses the TC 916 on the tax module.

(9) TC 919 posts to the entity module and reverses the TC 918.

(10) Further information pertaining to controlling ADP operations is contained in IRM 9326. See also IRM 9324.3.

3(10)8.3 (1-18-80) 9781 Initial Inquiries In an Investigation

3(10)8.31 (1-18-80) 9781 General

The initial investigative activity in an investigation should involve such inspection of the taxpayer's books and records or other related inquiries as are necessary to make an early determination as to whether or not the case possesses criminal potential. These inquiries should include a check of the Examination and Criminal Investigation Divisions to determine whether there is a pending or previous examination or investigation relating to the principal.

3(10)8.32 (1-18-80) 9781 Interview with Taxpayer or Inspection of His/Her Books

(1) The special agent must possess the original return or returns involved, if any were filed for the pertinent period, as a prerequisite to independently interviewing a taxpayer, his/her representative, or one of his/her present employees or inspecting the taxpayer's books and records.

(2) Exceptions may be made in cases where an examination is extended to include taxable

periods for which the original return is not available and the examination is based on the taxpayer's retained copy, or where such action is approved in writing by the Chief.

(3) The Chief, Criminal Investigation Division, or his/her designee, in assigning an investigation originating from a source other than a referral from Examination or Collection, may authorize the special agent to interview the taxpayer, his/her representative, or one of his/her present employees, or to inspect the taxpayer's books and records. He/she may authorize the special agent to make such inquiries independently or he/she may request the cooperation of a revenue agent or revenue officer, as appropriate, to assist in making the inquiries.

(4) The procedures outlined in (1), (2), and (3) above are limited to a taxpayer's own tax matters and have no application in an inquiry where an agent is merely securing information from another person, not under tax investigation, but who engaged in transactions with the taxpayer or has data relevant to the tax liability under inquiry.

3(10)8.33 (8-13-81) 9781 Information from Referring Agent/Officer

(1) It is essential that certain information be obtained by the special agent from the agent/officer of the Examination, Collection or Employee Plans and Exempt Organizations functions who initiates a fraud referral. This will help identify and resolve potential weaknesses (from a criminal standpoint) before significant time has been spent on the investigation by Criminal Investigation.

(2) Prior to Criminal Investigation accepting a fraud referral for investigation, the special agent shall obtain from the referring agent/officer information relating to occurrences in the case prior to the referral. Particular attention should be given to:

(a) Any explanations offered concerning the alleged offense;

(b) Whether returns were solicited, there were any attempts at civil settlement, or prior actions similar to the alleged offense were condoned by the IRS; and

(c) The referring agent/officer's observations about the age, health (physical and mental) and education of the taxpayer.

(3) The above information will be considered by Criminal Investigation in the referral evaluation process. If solicitation or condonation is an issue, it must be resolved before the referral is accepted for investigation.

(4) When a referral is accepted for investigation by Criminal Investigation, the special agent shall promptly meet with the referring agent/officer and determine whether a detailed memorandum is required concerning contacts with the taxpayer, the taxpayer's representative and the preparer of the taxpayer's return. If such a memorandum is needed, the following areas should be included:

(a) The date of each contact the referring agent/officer had with the taxpayer, the taxpayer's representative, and the preparer of the taxpayer's return; and

(b) A summary of what took place during each of those contacts, and in particular any explanations offered concerning the alleged offense and any action that could be construed as solicitation, condonation or an attempt at civil settlement.

(5) The memorandum will be submitted to the special agent for association with the Criminal Investigation case file.

3(10)9 (1-18-80) **Withdrawals**

9781

3(10)9.1 (1-18-80) **General**

9781

(1) Except under circumstances outlined in (3) below, a special agent shall withdraw from an investigation when it is determined that the case has no Criminal Investigation potential; i.e., prosecution will not be recommended. Therefore, an agent should be particularly alert to any circumstances affecting the criminal potential in a case.

(2) Early recognition of a fatal weakness to successful prosecution should substantially reduce the time spent by the special agent on cases involving only civil fraud. The special agent must adopt a positive case approach and make every reasonable effort to overcome the effect of adverse development in an investigation by obtaining all pertinent facts relating to the weakness. If sufficient evidence cannot be obtained by further investigation to overcome the identified weaknesses and the investigation is not substantially completed, the special agent should promptly initiate action to withdraw from the case. The proposal to withdraw

must be based solely on the lack of Criminal Investigation potential without regard for the civil fraud aspects of the case. As long as it appears that a recommendation for prosecution may be made in the case, the special agent should not initiate a withdrawal.

(3) Subsequent to the initiation of withdrawal action by the Criminal Investigation Division, the cooperating division may request through supervisory channels that the special agent continue with the investigation. Such requests generally are made only in cases where considerable duplication of effort by other Service personnel would be required to support a recommendation for assertion of the fraud penalty. However, the special agent will not resume the investigation unless so directed by his/her supervisor. If he/she is directed to continue participation, the special agent will complete the investigation and be responsible for recommending any civil penalties in the case (except those relating to tax estimations). He/she will also be responsible for developing, documenting, evaluating, and presenting the evidence necessary to sustain the assertion of such penalties. Text 761 contains information about the procedure for civil settlement of cases.

(4) The special agent will not withdraw, or signify his/her intention to withdraw, from a case in which the investigation has been substantially completed. Generally, the investigation will be considered substantially completed if one or more of the following conditions is present in the case:

(a) all significant investigative inquiries have been made;

(b) the special agent has prepared a draft of the final report in the case;

(c) the investigation has progressed to the point where the taxpayer would normally be afforded a final interview as provided in IRM 9355;

(d) the documentary evidence in possession of the special agent with respect to the civil fraud features of the case is such that its submission to the cooperating officer would require considerable time by the cooperating officer in becoming familiar with such evidence and preparing the detailed report necessary to present that evidence.

(5) Non-prosecution and discontinued reports will contain a section relating to evidence developed during the investigation which would

tend to support a subsequent recommendation of the civil fraud penalty. (See text 638.)

(6) See also IRM 9328.1 and IRM 9633.

3(10)9.2 (1-18-80)

9781

**Written Notification to Taxpayers
When Criminal Investigation
Division Discontinues an
Investigation**

(1) A letter will be sent to the taxpayer advising that the Criminal Investigation Division is no longer participating in the investigation and the case has been referred to Examination or Collection for completion. This procedure will be followed when:

(a) the Criminal Investigation Division has discontinued an investigation without a criminal recommendation; and

(b) the taxpayer is aware of the investigation because of a contact with the taxpayer by a special agent; or

(c) the taxpayer may be aware of the investigation because of third party contacts.

(2) The letter will be prepared by the Chief, Criminal Investigation Division for the signature of the District Director or designee and sent to the taxpayer by mail. Pattern Letter P-543, Exhibit 300-29, is a sample notification letter which should be used as a guide. Preprinted form letters will not be used.

(3) A copy of the letter will be mailed to the principal's representative (agent or attorney) if a power of attorney or tax information authorization has been filed in the case.

3(10)9.3 (1-18-80)

9781

Additional Indications of Fraud

Additional indications of fraud in discontinued cases, found during subsequent examination by the revenue agent or revenue officer, which he/she believes should be considered by Intelligence shall be the subject of a referral report regardless of whether or not the original investigation resulted from a referral report.

3(10)(10) (1-18-80)

9781

Non-prosecution Cases

(1) If at the conclusion of an investigation, the special agent believes that sufficient evidence cannot be obtained to establish a prosecution case, he/she shall discuss with his/her group manager his/her findings and proposed recommendations.

(2) See also 637 and IRM 9327.2.

3(11)0 (1-18-80)

9781

Calendar

Exhibit 300-17 is a 250-year calendar for general investigative use.

3(12)0 (1-18-80)

9781

Map

Exhibit 300-19 is a map which illustrates the Internal Revenue and Judicial District boundaries for general investigative use.

Exhibit 300-1**FORM 1180**

Handbook Reference Text 334.32:(2)

Standard Form 1180 Treasurer's Memo No. 6 (Rev.)						REQUEST FOR STOP PAYMENT (Forward to Office of Treasurer, U.S.)	
1. Date of Request 5/9/80	2. Reason <input type="checkbox"/> Non-receipt <input checked="" type="checkbox"/> Other:	<input type="checkbox"/> "x" if confirmation <input type="checkbox"/> Lost <input type="checkbox"/> Stolen <input type="checkbox"/> "x" if correction	3. Amount \$ 2500.35	4. Date of Check 4/13/80	5. Symbol 3127	6. Check Number 23,137,850	
7. Payee's Name (enter only when not identical to the claimant's name in Box 9) Kenneth and Jane M. Taxpayer 98 7-65-4320							
8. Remarks (including identification or reference) Don't issue substitute Certified Photocopy Requested Date needed by 5/13/80		9. Claimant of Check and Current Address S/A John Smith Internal Revenue Service Criminal Investigation Division P.O. 489 Anywhere, U.S.A. 05401			11. (RESERVED FOR TREAS. U.S.) STOPPED NOT PAID BOND/APPL./LETTER TO ON OTHER		
10. To: TREASURER, U.S., CHECK CLAIMS DIVISION, STOP PAY BRANCH, WASH- INGTON, D.C. 20226 From: Disbursing Officer		I CERTIFY that the above check description is correct and that nothing in my records indicates that the payee is not entitled to its proceeds UNLESS OTHERWISE STATED UNDER "REMARKS."			1208 1133 MISC.		

1180-116

Exhibit 300-2**The Numerical System of the American Bankers Association Index to Prefix Numbers Handbook Reference: Text 338.14** ◇

THE NUMERICAL SYSTEM
of
The American Bankers Association
Index to Prefix Numbers of Cities and States

Numbers 1 to 49 inclusive are Prefixes for Cities
 Numbers 50 to 99 inclusive are Prefixes for States
 Prefix Numbers 50 to 58 are Eastern States
 Prefix Number 59 is Alaska, American Samoa, Guam, Hawaii, Puerto Rico, and Virgin Islands
 Prefix Numbers 60 to 69 are Southeastern States
 Prefix Numbers 70 to 79 are Central States
 Prefix Numbers 80 to 88 are Southwestern States
 Prefix Numbers 90 to 99 are Western States

Prefix Numbers of Cities in Numerical Order

1 New York, N.Y.	18 Kansas City, Mo.	34 Tacoma, Wash.
2 Chicago, Ill.	19 Seattle, Wash.	35 Houston, Texas
3 Philadelphia, Pa.	20 Indianapolis, Ind.	36 St. Joseph, Mo.
4 St. Louis, Mo.	21 Louisville, Ky.	37 Fort Worth, Texas
5 Boston, Mass.	22 St. Paul, Minn.	38 Savannah, Ga.
6 Cleveland, Ohio	23 Denver, Colo.	39 Oklahoma City, Okla.
7 Baltimore, Md.	24 Portland, Ore.	40 Wichita, Kan.
8 Pittsburgh, Pa.	25 Columbus, Ohio	41 Sioux City, Iowa
9 Detroit, Mich.	26 Memphis, Tenn.	42 Pueblo, Colo.
10 Buffalo, N.Y.	27 Omaha, Neb.	43 Lincoln, Neb.
11 San Francisco, Calif.	28 Spokane, Wash.	44 Topeka, Kan.
12 Milwaukee, Wis.	29 Albany, N.Y.	45 Dubuque, Iowa
13 Cincinnati, Ohio	30 San Antonio, Texas	46 Galveston, Texas
14 New Orleans, La.	31 Salt Lake City, Utah	47 Cedar Rapids, Iowa
15 Washington, D.C.	32 Dallas, Texas	48 Waco, Texas
16 Los Angeles, Calif.	33 Des Moines, Iowa	49 Muskogee, Okla.
17 Minneapolis, Minn.		

Prefix Numbers of States in Numerical Order

50 New York	65 Maryland	83 Kansas
51 Connecticut	66 North Carolina	84 Louisiana
52 Maine	67 South Carolina	85 Mississippi
53 Massachusetts	68 Virginia	86 Oklahoma
54 New Hampshire	69 West Virginia	87 Tennessee
55 New Jersey	70 Illinois	88 Texas
56 Ohio	71 Indiana	89
57 Rhode Island	72 Iowa	90 California
58 Vermont	73 Kentucky	91 Arizona
59 Alaska, American	74 Michigan	92 Idaho
Samoa, Guam,	75 Minnesota	93 Montana
Hawaii, Puerto Rico,	76 Nebraska	94 Nevada
and Virgin Islands	77 North Dakota	95 New Mexico
60 Pennsylvania	78 South Dakota	96 Oregon
61 Alabama	79 Wisconsin	97 Utah
62 Delaware	80 Missouri	98 Washington
63 Florida	81 Arkansas	99 Wyoming
64 Georgia	82 Colorado	

Exhibit 300-3**Routing Symbols of Banks that are Members of the Federal Reserve System**
Handbook Reference: text 334.4:(1)

ROUTING SYMBOLS (IN ITALICS) OF BANKS THAT ARE MEMBERS OF THE FEDERAL RESERVE SYSTEM

ALL BANKS IN AREA SERVED BY A FEDERAL RESERVE BANK OR BRANCH CARRY THE ROUTING SYMBOL OF THE FEDERAL RESERVE BANK OR BRANCH

FEDERAL RESERVE BANKS
AND BRANCHES

1. Federal Reserve Bank of Boston	5-1	8. Federal Reserve Bank of	4-4
Head Office	110	St. Louis Head Office	810
2. Federal Reserve Bank of New	1-120	Little Rock Branch	81-13
York Head Office	210	Louisville Branch	820
Buffalo Branch	10-26	Memphis Branch	21-59
	220		830
3. Federal Reserve Bank of	3-4	9. Federal Reserve Bank of	26-3
Philadelphia Head Office	310	Minneapolis Head Office	840
4. Federal Reserve Bank of	0-1	Helena Branch	17-8
Cleveland Head Office	410		910
Cincinnati Branch	13-43	10. Federal Reserve Bank of	93-26
	420	Kansas City Head Office	920
Pittsburgh Branch	8-30	Denver Branch	18-4
	430		1010
5. Federal Reserve Bank of	68-3	Okalahoma City Branch	23-19
Richmond Head Office	510		1020
Baltimore Branch	7-27	Omaha Branch	39-24
	520		1030
Charlotte Branch	66-20	11. Federal Reserve Bank of	27-12
	530	Dallas Head Office	1040
6. Federal Reserve Bank of	64-14	El Paso Branch	32-3
Atlanta Head Office	610		1110
Birmingham Branch	61-19	Houston Branch	88-1
	620		1120
Jacksonville Branch	63-19	San Antonio Branch	35-4
	630		1130
Nashville Branch	87-10	12. Federal Reserve Bank of	30-72
	640	San Francisco Head Office	1140
New Orleans Branch	14-21	Los Angeles Branch	11-37
	650		1210
7. Federal Reserve Bank of	2-30	Portland Branch	16-16
Chicago Head Office	710		1220
Detroit Branch	9-29	Salt Lake City Branch	24-1
	720		1230
		Seattle Branch	31-31
			1240
			19-1
			1250

Exhibit 300-4**U.S. Secret Service Offices and Resident Agencies
Handbook Reference 334.3(4)(b)**

City	Commercial No.	F.T.S.	City	Commercial No.	F.T.S.
Aberdeen, SD	605-225-7341	782-7355	Miami, FL	305-350-5961	350-5961
Albany, GA	912-436-0323	230-6446	Milwaukee, WI	414-291-3587	362-3587
Albany, NY	518-472-2884	562-2884	Minneapolis, MN	612-725-2801	725-2801
Albuquerque, NM	505-766-3336	474-3336	Mobile, AL	205-690-2851	534-2851
Anchorage, AK	907-274-4913	265-5200	Montgomery, AL	205-832-7601	534-7601
Atlanta, GA	404-221-6111	242-6111	Nashville, TN	615-251-5841	852-5841
*Atlantic City, NJ	609-646-9306	346-0200	Newark, NJ	201-645-2334	341-2334
Austin, TX	512-397-5103	734-5103	New Haven, CT	203-865-2449	643-8770
Baltimore, MD	301-962-2200	922-2200	New Orleans, LA	504-589-2219	682-2219
Birmingham, AL	205-254-1144	229-1144	New York, NY	212-466-4400	668-4400
Bismarck, ND	701-255-3294	783-4329	Norfolk, VA	804-441-6736	939-6736
Boise, ID	208-384-1403	554-1403	Oklahoma City, OK	405-231-4476	736-4476
Boston, MA	617-223-2728	223-2728	Omaha, NE	402-221-4671	864-4671
Buffalo, NY	716-846-4401	437-4401	Orlando, FL	305-420-6333	820-6333
Canton, OH	216-455-3026	294-4265	Philadelphia, PA	215-597-0600	597-0600
Charleston, SC	304-343-6181 x255	924-1255	Phoenix, AZ	602-261-3556	261-3556
Charlotte, NC	704-523-9583	672-6154	Pittsburgh, PA	412-644-3384	722-3384
Chattanooga, TN	615-266-4014	852-8271	Portland, ME	207-774-7576	833-3493
Cheyenne, WY	None	328-2380	Portland, OR	503-221-2162	423-2162
Chicago, IL	312-353-5431	353-5431	Providence, RI	401-331-6456	838-4462
Cincinnati, OH	513-684-3585	684-3585	Raleigh, NC	919-755-4335	672-4335
Cleveland, OH	216-522-4365	293-4365	Reno, NV	702-784-5354	470-5354
Columbia, SC	803-765-5446	677-5446	Richmond, VA	804-782-2274	925-2274
Columbus, OH	614-469-7370	943-7370	Riverside, CA	714-787-1350	796-1350
Dallas, TX	None	729-8021	Roanoke, VA	703-982-6208	937-6208
Dayton, OH	513-222-2013	774-2900	Rochester, NY	716-263-6830	473-6830
Denver, CO	303-837-3027	327-3027	Sacramento, CA	916-440-2413	448-2413
Des Moines, IO	515-284-4565	862-4565	St. Louis, MO	314-425-4238	279-4238
Detroit, MI	313-226-6400	226-6400	Salt Lake City, UT	801-524-5910	588-5910
El Paso, TX	915-543-7546	572-7546	San Antonio, TX	512-229-6175	730-6175
Fort Worth, TX	817-334-2015	334-2015	San Diego, CA	714-293-5640	895-5640
Fresno, CA	209-487-5204	467-5204	San Francisco, CA	415-556-6800	556-6800
Gettysburg, PA	717-334-7173	None	San Juan, PR	809-753-4539	753-4539
	717-334-7174		Santa Barbara, CA	805-967-3583	960-7708
Grand Rapids, MI	616-456-2276	372-2276	Savannah, GA	912-234-0241	248-4401
Great Falls, MT	406-452-8515	585-1343	Scranton, PA	717-346-5781	592-8333
Honolulu, HI	808-546-5637	None	Seattle, WA	206-442-5495	399-5495
Houston, TX	713-226-5791	527-5791	Shreveport, LA	318-226-5299	493-5299
Indianapolis, IN	317-269-6444	331-6444	Spokane, WA	509-456-2532	439-2532
Jackson, MI	601-969-4436	490-4436	Springfield, IL	217-525-4033	955-4033
Jacksonville, FL	904-791-2777	946-2777	Springfield, MO	417-881-4688	754-2723
Kansas City, KA	816-374-5022	758-5022	Syracuse, NY	315-423-5338	950-5338
Knoxville, TN	615-524-4191	854-4527	Tampa, FL	813-228-2636	826-2636
Las Vegas, NV	702-385-6446	598-6446	Toledo, OH	419-259-6434	625-6434
Little Rock, AR	501-378-6241	740-6241	Tucson, AZ	602-792-6823	762-6823
Los Angeles, CA	213-688-4830	798-4830	Tulsa, OK	918-581-7272	736-7272
Louisville, KY	502-582-5171	352-5171	Washington, DC	202-634-5100	634-5100
Lubbock, TX	806-762-7347	738-7347	West Palm Beach, FL	305-659-0184	820-7696
Madison, WI	608-252-5191	364-5191	White Plains, NY	914-682-8181	656-5734
Melville, NY	516-249-0404	665-8541	Wichita, KA	316-267-1452	752-6694
Memphis, TN	901-521-3568	22-3568	Wilmington, DE	302-571-6188	487-6188

Exhibit 300-5**Form 5228****Handbook Reference: Text 342.133:(4)**Form **5228** (April 1974)
Department of the Treasury
Internal Revenue Service**Waiver of Right to Remain Silent and of
Right to Advice of Counsel****Statement of Rights**

Before we ask you any questions, it is my duty to advise you of your rights.

You have the right to remain silent.

Anything you say can be used against you in court, or other proceedings.

You have the right to consult an attorney before making any statement or answering any question, and you may have him present with you during questioning.

You may have an attorney appointed by the U.S. Magistrate or the court to represent you if you cannot afford or otherwise obtain one.

If you decide to answer questions now with or without a lawyer, you still have the right to stop the questioning at any time, or to stop the questioning for the purpose of consulting a lawyer.

However -

You may waive the right to advice of counsel and your right to remain silent, and you may answer questions or make a statement without consulting a lawyer if you so desire.

Waiver

I have had the above statements of my rights read and explained to me and fully understanding these rights I waive them freely and voluntarily, without threat or intimidation and without any promise of reward or immunity. I was taken into

custody at _____ (time), on _____ (date), and have signed this document at _____
(time), on _____ (date).

(Name)**Witnesses:**_____
(Name)_____
(Name)Form **5228** (4-74)

Exhibit 300-7

Form 2311

Handbook Reference: Text 346.52

Affidavit

United States of America Southern)
Judicial , District of Florida) ss

1 I, David J. Clark , state that:

2 I reside at 1742 Alpencress Drive, North Miami, Florida .

3 I am currently employed as a real estate salesman for the Cedar Realty Co., Inc.,

4 1429 79th St. N.W., Miami, Florida. I have been employed in this capacity since

5 1963. In early March, 1974 I was introduced to Lawrence Elder of Tiffin, Ohio by

6 a mutual acquaintance at a dinner meeting in Coral Gables, Florida. On March 17,

16 I have given Special Agent Joseph Smith the "settlement sheet" and the "offer

17 to purchase" relative to the sale of the previously mentioned property and have

18 received a receipt for them.

I have read the foregoing statement consisting of 2 pages, each of which I have signed. I fully understand this statement and it is true, accurate and complete to the best of my knowledge and belief. I made the corrections shown and placed my initials opposite each.

I made this statement freely and voluntarily without any threats or rewards, or promises of reward having been made to me in return for it.

/s/ David J. Clark

(Signature of affiant)

Subscribed and sworn to before me this 12
 day of February , 19 77 ,
 at 1429 79th St. N.W.
Miami, Florida

/s/ Joseph Smith

(Signature)

Special Agent

(Title)

Internal Revenue Service

(Signature of witness, if any)

Department of the Treasury - Internal Revenue Service

Form 2311 (Rev. 9-76)

NOTE: If needed, use bond or lined paper as continuation sheets. When practicable, have each paragraph in the statement contain information relating to one topic only. If applicable (see Handbook Subsection 242.13), use the following statement.

"I fully understand that I have the right under the United States Constitution to decline to make any statements, answer any questions, or present any data or evidence which may tend to incriminate me and I am aware that anything I say or any evidence I present may be used against me. I also understand that I have the right to counsel."

Exhibit 300-6**Suggested Outline for Questioning Person Who Prepared Returns, If Other Than Taxpayer**
Handbook Reference: text 346.32 ◇

(This is not intended to be inclusive)

1. Occupation and qualifications of preparer
 - A. Education
 - B. Experience
 - C. Enrolled
- II. Description of all books and records in detail
 - A. Primary records
 1. Cash receipts and disbursements book
 2. Journals: sales, purchases, cash
 3. Invoices and other original documents
 - B. Secondary Records
 1. Ledgers: general and subsidiary
 2. Trial balance books, and records of financial statements
 - C. Extent of witness' audit of books and records
- III. Source of all information on returns
 - A. Books and records (tie in with return)
 - B. No records (obtain information in detailed form)
 - C. Oral information
 - D. Records and books of other third parties
- IV. Items not shown on books or records (including income, assets, etc.)
 - V. Instructions and data received from taxpayer and any other persons
 - VI. Information as to whether returns were explained to taxpayer, and to what extent
 - VII. Copies of workpapers used in preparation of returns and copies of returns
 - A. Tie in with return
 - B. Supporting data
 - C. Arrange to inspect the workpapers and copies of returns
 - VIII. Conversations regarding tax matters with:
 - A. Taxpayer
 - B. Taxpayer's agent or other persons
 - IX. Details about witness' and taxpayer's knowledge concerning the signing and filing of each return, including
 - A. Identification of each return prepared by witness
 - B. Where each return was prepared.
 - C. Where each return was signed

Exhibit 300-8**Suggested Format for Statement**
Handbook Reference: text 346.53

◇

SUGGESTED FORMAT FOR STATEMENT

In re: Name and address of subject

Time: Date and hour of interview

Place: Location of interview

On _____ 19—, I, Special Agent _____ questioned Mr. _____ about _____.

Mr. _____ stated _____.

.....

Note: If feasible, the subject should be requested to examine and sign it. If he refuses, the following legend will be inserted at the end of the statement when applicable. "This statement was read by Mr. _____ (the subject), on _____ 19— who stated that it was true and correct, but refused to be placed under oath or to sign it.

Date and Time_____
Special Agent
Internal Revenue Service_____
Date and Time_____
Witness_____
Date and Time_____
Witness

Exhibit 300-9**Suggested Format for Question and Answer Statement**
Handbook Reference: text 346.541**SUGGESTED FORMAT FOR QUESTION AND ANSWER STATEMENT**

Testimony of John J. Jones, 115 South Street, Chester, Pennsylvania 19013, given in the office of the Criminal Investigation Division, Internal Revenue Service Room _____, United States Courthouse, 401 N. Broad Street, Philadelphia, Pennsylvania, at 9:30 a.m., on Tuesday, September 7, 19_____, about his Federal income tax.

Present: Mr. John J. Jones, Taxpayer
Adam Adams, Attorney
John Smith, Special Agent
Alexander White, Revenue Agent
Evelyn Green, Reporter

(Questions were asked by Special Agent Smith and answers were given by Mr. Jones unless otherwise specified).

(Mr. Jones, this interview is being recorded, as we agreed, by means of the tape recorder on your left).

1. Q. Mr. Jones, you were requested to appear at this office to answer questions concerning your Federal income tax for the years 19— to 19—, inclusive. First, I advise you that under the Fifth Amendment to the Constitution of the United States I cannot compel you to answer any questions or to submit any information if such answers or information might tend to incriminate you in any way. I also advise you that anything you say and any documents you submit may be used against you in any criminal proceeding which may be undertaken. Do you fully understand this? (If the taxpayer requests clarification, either as to his rights or the purpose of the investigation, the special agent will give such explanation as is necessary to clarify the matter. If the taxpayer appears without an attorney, the special agent will advise him that he may, if he wishes, seek the counsel of an attorney before responding to questions).

2. Q. Please stand and raise your hand. Do you, John J. Jones, solemnly swear that the answers you are about to give to the questions asked will be the truth, so help you God? (The special agent will stand while administering the oath).

270. Q. Mr. Jones, have I, or has any other Federal agent, threatened or intimidated you in any manner?

A. No.

271. Q. Have I, or any other Federal agent, offered you any rewards, or promises of reward or immunity, in return for this statement?

A. No.

272. Q. Have you given this statement freely and voluntarily?

A. Yes.

273. Q. Is there anything further you care to add for the record?

A. No.

(After this statement has been transcribed, you will be given an opportunity to read it, correct any typographical errors, and sign it.)

United States of America)	
Eastern Judicial District of)	SS
Pennsylvania)	

I have carefully read the foregoing statement consisting of pages 1 to _____, inclusive, which is a correct transcript of my answers to the questions asked me on the _____ day of _____, 19—, at the offices of the Criminal Investigation Division, Internal Revenue Service, Philadelphia, Pennsylvania, relative to my Federal income tax. I hereby certify that the foregoing answers are true and correct, that I have made the corrections shown and have placed my initials opposite each correction, and that I have initialed each page of the statement.

Exhibit 300-9 Cont.

Suggested Format for Question and Answer Statement



Subscribed and sworn to before me at _____ m, this _____ day of _____ 19____, at

Special Agent

_____, Reporter, do hereby certify that I took the foregoing statement of _____
_____ in shorthand, personally transcribed it from my shorthand pages, and initialed each
page.

/s/

Exhibit 300-10**Example of Memorandum of Interview**
Handbook Reference: text 346.55**EXAMPLE OF MEMORANDUM OF INTERVIEW***In re:* Name and address of subject(s) being investigated*Date and time of interview:* Tuesday, July 19 _____

_____ a.m. to _____ p.m.

Place: Location of interview*Present:* _____ (Taxpayer, witness, etc.)

_____ Internal Revenue Agent

_____ Special Agent

Interview conducted by Special Agent _____

.....

Note: All pertinent information relating to the interview should be in the memorandum in some logical manner, either in order of topics discussed, importance, chronological, or any other appropriate order.

.....

Date and Time_____
Special Agent_____
Place_____
Internal Revenue Agent_____
Date and Time

* When applicable

If pertinent the following may be included:

I (prepared) (dictated) this memorandum on _____, 19—, after refreshing my memory from notes made during and immediately after the interview with the taxpayer.

Special AgentI certify that this memorandum has recorded in it a summary of all pertinent matters discussed with the taxpayer on _____
19—_____
Internal Revenue Agent

Exhibit 300-11

Example of Informal Notes**Handbook Reference: text 346.56****EXAMPLE OF INFORMAL NOTES**

On Wednesday July-19-at 10:00 a.m., I questioned Tom Brown of 1124 Euclid Street N.W., Washington, D.C., 20017 in his office, 117 Elm Street, Washington, D.C., about his purchase of a 19— Station Wagon from Smith Motors Inc. He stated that he purchased the Station Wagon, bearing serial number 1173945, for \$3,250.00 from Joseph Smith, President of Smith Motors, and that he gave Mr. Smith his personal check number 117, dated _____ 19— for \$3,250.00. He agreed to submit an affidavit relating to his purchase. Internal Revenue Agent King, of Baltimore, Maryland, witnessed the interview which was concluded at 10:47 a.m.

/S/ William Penn
Special Agent

Exhibit 300-12**Form 2725****Handbook Reference: Text 342.12:(9)**

FORM 2725 (REV. DEC. 1970)	DEPARTMENT OF THE TREASURY - INTERNAL REVENUE SERVICE DOCUMENT RECEIPT						
1. DOCUMENTS SUBMITTED IN RE: <u>Harrison Sales Co., Inc. 718 Rand Street, Houston, Texas 77015</u>							
2. DISTRICT <u>Southern District of Texas</u>	3. DATE <u>August 6, 19__</u>						
4. SUBMITTED BY <u>Mr. J. C. Harrison, President</u>	5. PLACE OF SUBMISSION <u>Harrison Sales Co., Inc. Houston, Texas</u>						
6. I ACKNOWLEDGE RECEIPT OF THE FOLLOWING DOCUMENTS SUBMITTED IN AN OFFICIAL MATTER:							
<p>Forty-two customers' files for the years 19__, 19__, and 19__ containing the following data:</p> <ul style="list-style-type: none"> (1) The customer's accounts receivable account cards reflecting installment payments on these sales. (2) Retained copies of the customer's invoices on charge sales made in the years 19__, 19__, and 19__. (3) Delivery receipts on these sales. 							
<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%; vertical-align: top;"> 7A. RECEIVED BY (Signature) <u>Norman A. Stone</u> </td> <td style="width: 50%; vertical-align: top;"> 7B. ADDRESS <u>210 Federal Building Houston, Texas</u> </td> </tr> <tr> <td style="vertical-align: top;"> 7C. TITLE <u>Special Agent</u> </td> <td style="vertical-align: top;"> 7D. PHONE NO. <u>PI 8-8386</u> </td> </tr> <tr> <td style="vertical-align: top;"> 8A. ACCOMPANIED BY (Signature) <u>J. Joseph Howe</u> </td> <td style="vertical-align: top;"> 8B. TITLE <u>Internal Revenue Agent</u> </td> </tr> </table>		7A. RECEIVED BY (Signature) <u>Norman A. Stone</u>	7B. ADDRESS <u>210 Federal Building Houston, Texas</u>	7C. TITLE <u>Special Agent</u>	7D. PHONE NO. <u>PI 8-8386</u>	8A. ACCOMPANIED BY (Signature) <u>J. Joseph Howe</u>	8B. TITLE <u>Internal Revenue Agent</u>
7A. RECEIVED BY (Signature) <u>Norman A. Stone</u>	7B. ADDRESS <u>210 Federal Building Houston, Texas</u>						
7C. TITLE <u>Special Agent</u>	7D. PHONE NO. <u>PI 8-8386</u>						
8A. ACCOMPANIED BY (Signature) <u>J. Joseph Howe</u>	8B. TITLE <u>Internal Revenue Agent</u>						
9. Acknowledgment of return of documents							
The above documents were returned to me as indicated at right →	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%; vertical-align: top;"> 10A. DATE RETURNED <u>8/21/__</u> </td> <td style="width: 50%; vertical-align: top;"> 10B. PLACE AT WHICH RETURNED <u>Harrison Sales Co., Inc.</u> </td> </tr> <tr> <td colspan="2" style="vertical-align: top;"> 10C. NAME OF PERSON RETURNING DOCUMENTS <u>Special Agent Norman A. Stone</u> </td> </tr> </table>	10A. DATE RETURNED <u>8/21/__</u>	10B. PLACE AT WHICH RETURNED <u>Harrison Sales Co., Inc.</u>	10C. NAME OF PERSON RETURNING DOCUMENTS <u>Special Agent Norman A. Stone</u>			
10A. DATE RETURNED <u>8/21/__</u>	10B. PLACE AT WHICH RETURNED <u>Harrison Sales Co., Inc.</u>						
10C. NAME OF PERSON RETURNING DOCUMENTS <u>Special Agent Norman A. Stone</u>							
11. SIGNATURE OF PERSON TO WHOM DOCUMENTS WERE RETURNED <u>J. C. Harrison, President</u>							

FORM 2725 (Part I) (REV. 12-70)

Exhibit 300-12 Cont. (1)**Form 2725 (Reverse)****HISTORY AND CUSTODY OF DOCUMENTS****12. HOW DOCUMENTS WERE OBTAINED (Check one)**

☐ BY CONSENT (Note any significant comments of the principal or third-party witness and any unusual circumstances which occurred)

☒ BY LEGAL PROCESS (Describe) Mr. J. C. Harrison failed to comply with a summons served upon him on July 18, 19___. A court order directing compliance was issued in the U.S. District Court, Southern District of Texas, on August 5, 19__.

13. RELATIONSHIP BETWEEN DOCUMENTS AND PERSON SUBMITTING THEM

Mr. J. C. Harrison is custodian of the records for the Harrison Sales Co., Inc.

14A. WERE MANUAL TRANSCRIPTS OR FACSIMILE COPIES MADE OF ANY OF THE DOCUMENTS EITHER IN WHOLE OR IN PART?

☒ YES ☐ NO

14B. Documents Copied	Manner of Reproduction
1. All customers' accounts receivable cards	Photostated
2. All retained copies of invoices	Photostated
3. Delivery receipts (Receipt number, customer name, and date of delivery)	Transcribed

15. HAVE ALL COPIES BEEN COMPARED WITH THE ORIGINAL DOCUMENTS AND IDENTIFIED?

☒ YES ☐ NO (Mention reason for any exceptions)

16. WERE THE ORIGINAL DOCUMENTS DESCRIBED HEREIN UNDER YOUR CONTROL OR SUPERVISION AT ALL TIMES PRIOR TO THEIR RETURN TO THE PRINCIPAL, THIRD-PARTY WITNESS, OR REPRESENTATIVE?

☒ YES ☐ NO (Set forth circumstances of any transfer in control)

17. DID THE PRINCIPAL, THIRD-PARTY WITNESS, OR A REPRESENTATIVE REQUEST ACCESS TO THE DOCUMENTS DURING YOUR CUSTODY?

☒ YES (What action was taken?)

☐ NO

Mr. F. J. Black, an attorney and representative of the Harrison Sales Co., Inc., examined the records in my presence on August 10, 19__.

18A. SIGNATURE

Norman A. Stone

18B. TITLE

Special Agent

FORM 2725 (Part 2) (REV. 12-70)

Exhibit 300-12 Cont. (2)

General Instructions for Form 2725



(1) Indicate the full name and address, including the street number, city and State of the principal whose tax liability or other alleged violation is being investigated.

(2) The Internal Revenue or the Judicial District having jurisdiction over the matter under investigation should appear after the word "District".

(3) Insert the date on which the document receipt was executed by the issuing officer. This date should correspond with the date the documents were actually submitted by the principal, third-party witness, or a representative.

(4) Set forth the full name of the individual from whom the documents were received. If the records were obtained from the principal, his/her name should appear in this space as well as in the space provided for the subject (Item 1). If the documents were received from an officer or employee of a corporation, his/her full name and title should be shown. List the name of the corporation involved and its location, where applicable, as the place of submission.

(5) Designate the actual address where the documents were obtained. If the records were delivered, note the place of delivery in this space.

(6) Itemize the documents in sufficient detail so that the identity of the books, records, or other data may be ascertained at all times. A separate sheet of paper prepared in duplicate may be used as a continuation sheet where the items are numerous. The continuation sheets should be clearly identified and associated with the document receipt form.

(7) The officer receiving the documents shall sign the receipt and enter his/her address, official title, and phone number in the space provided.

(8) If the person receiving the documents is accompanied by another officer, the accompanying officer should sign the document receipt and enter his/her official title.

(9) An acknowledgement shall be obtained on the original copy of the receipt form showing the return of the documents.

(10) The principal, third-party witness, or a representative should fill in the date the docu-

ments were returned, the address at which the items were returned, and the full name and title of the person returning the records.

(11) Whenever conveniently possible the documents should be returned to the principal, third-party witness, or the respective representative who originally submitted the items. His/Her signature should be obtained acknowledging the return of the records. If that person is not available, the acknowledgment may be executed by a clearly authorized employee, representative, or replacement. When the officer is unable to obtain the original of the document receipt which he/she issued, the acknowledgment should be solicited on the retained copy in his/her possession. The agent or other officer should exercise special care to prevent the disclosure of any information appearing in the history and custody of documents section whenever the acknowledgment is obtained on the retained copy of the document receipt. Each piecemeal return of records may be accomplished by preparing a document receipt form showing the items returned, and obtaining the acknowledgment. Items 7A through 8B should be left blank in such instances. If the person to whom the receipt was issued refuses to execute an acknowledgment for any reason, cross out the words "to me" and complete items 10A through 10C.

(12) Show the manner in which the documents were obtained by checking one of the squares and comment briefly regarding any unusual circumstances or remarks occurring at the time the records were submitted on a voluntary basis. A principal may give the reason for his/her voluntary action at this time or make other statements relating to the completeness or incompleteness of the documents. If there are extended conversations relating to the records, it will suffice to refer to a memorandum of such discussions. Where the records were secured by means of a summons or other legal process, an account of the action should be shown. A typical situation may be as follows: "I issued a summons for the documents on November 3, 19—".

Exhibit 300-12 Cont. (3)

General Instructions for Form 2725 ◇

(13) Note whether the person submitting the records prepared the documents, holds the documents as custodian, owns the documents, or has some other basis for possessing them.

(14) Indicate whether all or any parts of the documents were copied for possible future use, and follow with a list of documents copied and the manner of reproduction. An example would be: Bank statements—Photostated: Cancelled checks—Columnar analysis prepared; Patient account cards—Transcribed all cards and photostated representative group; Disbursement records—Summaries prepared.

(15) Check whether manual transcripts or facsimile copies were compared with original documents and identified. Set forth the reason for any exceptions.

(16) The person receiving the documents should exercise adequate care to safeguard the items in his/her custody and any transfer of control should be outlined in this section. The administrative procedure of securing photostats or other reproductions of documents should not be construed as a loss or transfer of control. However, the transfer of a case to another agent, the transfer of documents to the jurisdiction of the court, or any analogous situation should be explained.

(17) Any requests for access to or the return of documents by the principal, third-party witness, or a representative should be outlined briefly.

(18) The person having knowledge of the history and custody of the documents should sign the statement and enter his/her official title.

Exhibit 300-13**Form M-2060**

Department of the Treasury Internal Revenue Service		Order No. 4 (Rev. 9)	
Delegation Order		Date of issue	Effective Date
		June 27, 1979	June 27, 1979
Subject Authority to Issue Summonses, to Administer Oaths and Certify, and to Perform Other Functions			
<p>1(a). The authorities granted to the Commissioner of Internal Revenue by 26 CFR 301.7602-1(b), 301.7603-1, 301.7604-1, 301.7605-1(a) and the authorities contained in Section 7609 of the Internal Revenue Code of 1954 and vested in the Commissioner of Internal Revenue Service by Treasury Department Order No. 150-37, dated March 17, 1955, to issue summonses; to set the time and place for appearance; to serve summonses; to take testimony under oath of the person summoned; to receive and examine books, papers, records or other data produced in compliance with the summons; to enforce summonses; to apply for court orders approving the service of John Doe Summonses issued under Section 7609(f) of the Internal Revenue Code; and to apply for court orders suspending the notice requirements in the case of summonses issued under Section 7609(g) of the Internal Revenue Code, are delegated to the officers and employees of the Internal Revenue Service specified in paragraphs 1(b), 1(c), and 1(d) of this Order and subject to the limitations stated in paragraphs 1(b), 1(c), 1(d), and 6 of this Order.</p> <p>(b). The authorities to issue summonses and to perform the other functions related thereto specified in paragraphs 1(a) of this Order, are delegated to all District Directors, the Director of International Operations, and the following officers and employees, provided that the authority to issue a summons in which the proper name or names of the taxpayer or taxpayers is not identified because unknown or unidentifiable (hereinafter called a "John Doe" summons) may be exercised only by said officers and employees and by them only after obtaining preissuance legal review by Regional Counsel, Deputy Regional Counsel (General Litigation) or District Counsel, or the Director, General Litigation Division in the case of Inspection.</p> <ol style="list-style-type: none"> (1) Inspection: Assistant Commissioner and Director, Internal Security Division. (2) District Criminal Investigation: Chief of Division, except this authority in streamlined districts is limited to the District Director. (3) International Operations: Chiefs of Divisions. (4) District Collection Activity: Chief of Division, except this authority in streamlined districts is limited to the District Director. 			

Form M-2060 (Rev. 8-56)

Exhibit 300-13 Cont. (1)**Form M-2060**

(5) District Examination: Chief of Division, except this authority in streamlined districts is limited to the District Director.

(6) District Employee Plans and Exempt Organizations: Chief of Division.

(c) The authorities to issue summonses except "John Doe" summonses, and to perform other functions related thereto specified in paragraph 1(a) of this Order, are delegated to the following officers and employees:

(1) Inspection: Regional Inspectors and Assistant Regional Inspectors (Internal Security) and Chief, Investigations Branch.

(2) District Criminal Investigation: Assistant Chief of Division; Chiefs of Branches; and Group Managers.

(3) International Operations: Assistant Director; Chiefs of Branches; Case Managers; and Group Managers.

(4) District Collection Activity; Assistant Chief of Division; Chiefs of Collection Section; Chiefs of Field Branches and Office Branches; Chiefs, Special Procedures Staffs; Chiefs, Technical and Office Compliance Branches and Groups and Group Managers.

(5) District Examination: Chiefs of Branches, Case Managers, Group Managers and, in streamlined districts, Chiefs, Examination Section.

(6) District Employee Plans and Exempt Organizations: Group Managers.

(d) The authority to issue summonses except "John Doe" summonses and to perform the other functions related thereto specified in paragraph 1(a) of this Order is delegated to the following officers and employees except that in the instance of a summons to a third party witness, the issuing officer's case manager, group manager, or any supervisory official above that level, has in advance personally authorized the issuance of the summons. Such authorization shall be manifested by the signature of the authorizing officer on the face of the original and all copies of the summons or by a statement on the face of the original and all copies of the summons, signed by the issuing officer, that he/she had prior authorization to issue said summons and stating the name and title of the authorizing official and the date of authorization.

(1) International Operations: Internal Revenue Agents; Attorneys, Estate Tax; Estate Tax Examiners; Special Agents; Revenue Service and Assistant Revenue Service Representatives; Tax Auditors; and Revenue Officers, GS-9 and above.

(2) District Criminal Investigation: Special Agents.

(3) District Collection: Revenue Officers, GS-9 and above.

(4) District Examination: Internal Revenue Agents; Tax Auditors; Attorneys, Estate Tax; and Estate Tax Examiners.

(5) District Employee Plans and Exempt Organizations: Internal Revenue Agents; Tax Law Specialists; and Tax Auditors.

(e) Each of the officers and employees referred to in paragraphs 1(b), 1(c), and 1(d) of this Order may serve a summons whether it is issued by him/her or another official.

(f) Revenue Officers and Revenue Representatives who are assigned to the District Collection Activity and to International Operations may serve any summons issued by the officers and employees referred to in paragraphs 1(b), 1(c) and 1(d) of this Order.

2. Each of the officers and employees referred to in paragraphs 1(b), 1(c) and 1(d) of this Order authorized to issue summonses, is delegated the authority under 26 CFR 201.7602-1(b) to designate any other officer or employee of the Internal Revenue Service referred to in paragraph 4(b) of this Order, as the individual before whom a person summoned pursuant to Section 7602 of the Internal Revenue Code shall appear. Any such other officer or employee of the Internal Revenue Service when so designated in a summons is authorized to take testimony under oath of the person summoned and to receive and examine books, papers, records or other data produced in compliance with the summons.

3. Internal Security Inspectors are delegated the authority under 26 CFR 301.7603-1 to serve summonses issued in accordance with this Order by any of the officers and employees of the Inspection Service referred to in paragraphs 1(b)(1) and 1(c)(1) of this Order even though Internal Security Inspectors do not have the authority to issue summonses.

Exhibit 300-13 Cont. (2)**Form M-2060**

4(a). The authorities granted to the Commissioner of Internal Revenue by 26 CFR 301.7602-1(a), and 301.7605-1(a) to examine books, papers, records or other data, to take testimony under oath and to set the time and place of examination are delegated to the officers and employees of the Internal Revenue Service specified in paragraphs 4(b), 4(c), and 4(d) of this Order and subject to the limitations stated in paragraphs 4(c) and 6 of this Order.

(b) General Designations.

(1) Inspection: Assistant Commissioner; Director, Internal Security Division; Director, Internal Audit Division; Regional Inspectors; Internal Auditors; and Internal Security Inspectors.

(2) District Criminal Investigation: Chief and Assistant Chief of Division; Chiefs of Branches; Group Managers; and Special Agents.

(3) International Operations: Director; Assistant Director; Chiefs of Divisions and Branches; Special Agents; Case Managers; Group Managers; Internal Revenue Agents; Attorneys, Estate Tax; Estate Tax Examiners; Revenue Service and Assistant Revenue Service Representatives; Tax Auditors; and Revenue Officers.

(4) District Collection Activity: Chief and Assistant Chief of Division; Chiefs of Field Branches and Office Branches; Chiefs, Special Procedures Staffs; Chiefs, Technical and Office Compliance Branches; Chiefs, Collection Section; Chiefs, Technical and Office Compliance Branches and Groups; Group Managers and Revenue Officers.

(5) District Examination: Chief of Division; Chiefs of Examination Sections; Chiefs of Examination Branches; Case Managers; Group Managers; Internal Revenue Agents; Tax Auditors; Attorneys, Estate Tax; and Estate Tax Examiners.

(6) District Employee Plans and Exempt Organizations: Chief of Division; Chief, Examination Branch; Chief, Technical Staff; Group Managers; Internal Revenue Agents; Tax Law Specialists; and Tax Auditors.

(7) Service Center: Chief, Compliance Division; Chief, Examination Branch; Chief, Collection Branch; Chief, Criminal Investigation Branch; Revenue Agents; Tax Auditors; Tax Examiners in the Correspondence and Processing function; and Special Agents.

(c) District Directors, Service Center Directors, Regional Inspectors, the Chief of Investigation Branch, and the Director of International

Operations may redelegate the authority under 4(a) of this Order to Law Clerks (Estate Tax), aides or trainees, respectively, for the positions of Revenue Agent, Tax Auditor, Tax Examiner in the Service Center Correspondence and Processing function, Tax Law Specialists, Revenue Officer, Internal Auditor, Internal Security Inspector, Attorney (Estate Tax) and Special Agent, provided that each such Law Clerk (Estate Tax), aide or trainee shall exercise said authority only under the direct supervision, respectively, as applicable of a Revenue Agent, Tax Auditor, Tax Examiner in the Service Center Correspondence and Processing function, Tax Law Specialist, Revenue Officer, Special Agent, Internal Auditor, Internal Security Inspector or Attorney (Estate Tax).

(d) District Directors may redelegate the authority under 4(a) of this Order to Revenue Representatives and Office Collection Representatives.

5. Under the authority granted to the Commissioner of Internal Revenue by 26 CFR 301.7622-1, the officers and employees of the Internal Revenue Service referred to in paragraphs 1(b), 1(c), 1(d), and 4(b) and 4(c) of this Order are designated to administer oaths and affirmations and to certify to such papers as may be necessary under the internal revenue laws and regulations except that the authority to certify shall not be construed as applying to those papers or documents the certification of which is authorized by separate order or directive. Revenue Representatives and Office Collection Representatives referred to in paragraph 4(d) of this Order are not designated to administer oaths or to perform the other functions mentioned in this paragraph, except that Revenue Representatives are authorized to certify the method and manner of service, and the method and manner of giving notice, when performing the functions and duties contained in paragraph 1(f) of this order.

6. The authority delegated herein may not be redelegated except as provided in paragraphs 4(c) and 4(d).

7. This Order supersedes Delegation Order No. 4 (Rev. 8), issued April 16, 1979.

/s/ Jerome Kurtz
Commissioner

Exhibit 300-14

Form 2039

(Rev. 11-78)

SummonsDepartment of the Treasury
Internal Revenue Service

Harrison Sales Co., Inc.
718 Rand Street
Houston, Texas 77015

In the matter of the tax liability of _____

Internal Revenue District of Austin, Texas Periods 19--, 19--, and 19--.

The Commissioner of Internal Revenue
Mr. J.C. Harrison, as President of _____
To Harrison Sales Co., Inc.

At 718 Rand Street, Houston, Texas 77015

You are hereby summoned and required to appear before Norman A. Stone,
an officer of the Internal Revenue Service, to give testimony relating to the tax liability or the collection of the tax liability of the person identified
above for the periods shown and to bring with you and produce for examination the following books, records, papers, and other data:

The following records of Harrison Sales Co., Inc.
Customer's files for the years 19__, 19__, and 19__ containing the following data:

- (1) Retained copy of customer's invoices on charge sales made in the
years 19__, 19__, and 19__.
- (2) Delivery receipts on these sales.
- (3) Customer's accounts receivable account cards reflecting installment
payments made on these sales.

Customer's account cards for accounts to whom sales were made in 19__, 19__, and
19__ on which current payments are still being made are excepted from the require-
ment for production at the time and place shown, provided that access to such of
these records as is required will be granted at a mutually appointed time at the
company's office, to be agreed upon at this appearance.

Business address and telephone number of Internal Revenue Service officer named above:

Suite 250, 2525 North Loop W., Houston, Texas #713-527-4681

Place and time for appearance:

at 210 Federal Land Bank Building, 430 Lamar Ave., Houston, Texason the 29th day of July, 19__ at 10:00 o'clock A. M.Issued under authority of the Internal Revenue Code this 18th day of July, 19__

Norman A. Stone Special Agent
Signature of Issuing Officer Title

Benjamin Morrison Group Manager
Signature of Approving Officer (if applicable) Title

Original to be kept by IRS

Form 2039 (Rev. 11-78)

Part A — To be given to person summoned

Form 2039-A (Rev. 11-78)

Part C — To be given to noticee

Form 2039-C (Rev. 11-

Exhibit 300-14 Cont. (1)

Form 2039

Certificate of Service of Summons and Notice

(Pursuant to section 7603, Internal Revenue Code)



I certify that I served the summons shown on the front of this form on:

Date July 18, 19- Time 10:15 A.M.

How ☒ I handed an attested copy of the summons to the person to whom it was directed.

Summons 15 718 Rand Street, Houston, Texas 16

Was ☐ I left an attested copy of the summons at the last and usual place of abode of the person to whom it was directed.

Served ☐ I left the copy with the following person (if any).

17

18

Signature Norman C. Stone Title Special Agent

This certificate is made to show compliance with section 7609, Internal Revenue Code. This certificate applies only to summonses served on third-party recordkeepers and not to summonses served on other third parties or any officer or employee of the person to whose liability the summons relates nor to summonses in aid of col-

lection, to determine the identity of a person having a numbered account or similar arrangement, or to determine whether or not records of the business transactions or affairs of an identified person have been made or kept.

I certify that, within 3 days of serving the summons, I gave notice (Form 2039-D) to the person named below on the date and in the manner indicated.

Date of Giving Notice: _____ Time: _____

Name of Noticee: _____

Address of Noticee (if mailed): _____

How Notice Was Given ☐ I gave notice by certified or registered mail to the last known address of the noticee.

☐ I gave notice by handing it to the noticee.

☐ In the absence of a last known address of the noticee, I left the notice with the person summoned.

☐ I left the notice at the last and usual place of abode of the noticee. I left the copy with the following person (if any).

☒ No notice is required.

Signature Norman C. Stone Title Special Agent

Form 2039 (Rev. 11-78)

Exhibit 300-14 Cont. (2)**Form 2039-A****Sec. 7602. Examination of books and witnesses**

For the purpose of ascertaining the correctness of any return, making a return where none has been made, determining the liability of any person for any internal revenue tax or the liability at law or in equity of any transferee or fiduciary of any person in respect of any internal revenue tax, or collecting any such liability, the Secretary is authorized—

(1) To examine any books, papers, records, or other data which may be relevant or material to such inquiry,

(2) To summon the person liable for tax or required to perform the act, or any officer or employee of such person, or any person having possession, custody, or care of books of account containing entries relating to the business of the person liable for tax or required to perform the act, or any other person the Secretary may deem proper, to appear before the Secretary at a time and place named in the summons and to produce such books, papers, records, or other data, and to give such testimony, under oath, as may be relevant or material to such inquiry; and

(3) To take such testimony of the person concerned, under oath, as may be relevant or material to such inquiry.

Authority to examine books and witnesses is also provided under sec. 6420(e)(2)—Gasoline used on farms; sec. 6421(f)(2)—Gasoline used for certain nonhighway purposes or by local transit systems; sec. 6424(d)(2)—Lubricating oil not used in highway motor vehicles; and sec. 6427(f)(2)—Fuels not used for taxable purposes.

Sec. 7605. Time and place of examination

(a) Time and Place.—The time and place of examination pursuant to the provisions of section 6420(e)(2), 6421(f)(2), 6424(d)(2), 6427(f)(2), or 7602 shall be such time and place as may be fixed by the Secretary, and as are reasonable under the circumstances. In the case of a summons under authority of paragraph (2) of section 7602, or under the corresponding authority of section 6420(e)(2), 6421(f)(2), 6424(d)(2), or 6427(f)(2) the date fixed for appearance before the Secretary, shall not be less than 10 days from the date of the summons.

Sec. 7603. Service of summons

A summons issued under section 6420(e)(2), 6421(f)(2), 6424(d)(2), 6427(f)(2), or 7602 shall be served by the Secretary, by an attested copy delivered in hand to the person to whom it is directed, or left at his last and usual place of abode; and the certificate of service signed by the person serving the summons shall be evidence of the facts it states on the hearing of an application for the enforcement of the summons. When the summons requires the production of books, papers, records, or other data, it shall be sufficient if such books, papers, records, or other data are described with reasonable certainty.

Sec. 7609. Special procedures for summonses issued to third-party recordkeepers

Special provisions relating to the issuance of a summons to a third-party recordkeeper are contained in section 7609.

Sec. 7604. Enforcement of summons

(a) Jurisdiction of district court.—If any person is summoned under the internal revenue laws to appear, to testify, or to produce books, papers, records, or other data, the United States district court for the district in which such person resides or is found shall have jurisdiction by appropriate process to compel such attendance, testimony, or production of books, papers, records, or other data.

(b) Enforcement.—Whenever any person summoned under section 6420(e)(2), 6421(f)(2), 6424(d)(2), 6427(f)(2), or 7602 neglects or refuses to obey such summons, or to produce books, papers, records, or other data, or to give testimony, as required, the Secretary may apply to the judge of the district court or to a United States commissioner¹ for the district within which the person so summoned resides or is found for an attachment against him as for a contempt. It shall be the duty of the judge or commissioner¹ to hear the application, and, if satisfactory proof is made to issue an attachment, directed to some proper officer, for the arrest of such person, and upon his being brought before him to proceed to a hearing of the case; and upon such hearing the judge or the United States commissioner¹ shall have power to make such order as he shall deem proper, not inconsistent with the law for the punishment of contempts, to enforce obedience to the requirements of the summons and to punish such person for his default or disobedience.

¹Or United States magistrate, pursuant to P.L. 90-578.

Sec. 7610. Fees and costs for witnesses

(a) In General.—The Secretary shall by regulations establish the rates and conditions under which payment may be made of—

(1) fees and mileage to persons who are summoned to appear before the Secretary; and

(2) reimbursement for such costs that are reasonably necessary which have been directly incurred in searching for, reproducing, or transporting books, papers, records, or other data required to be produced by summons.

(b) Exceptions.—No payment may be made under paragraph (2) of subsection (a) if—

(1) the person with respect to whose liability the summons is issued has a proprietary interest in the books, papers, records or other data required to be produced; or

(2) the person summoned is the person with respect to whose liability the summons is issued or an officer, employee, agent, accountant, or attorney of such person who, at the time the summons is served, is acting as such.

(c) Summons to which section applies.—This section applies with respect to any summons authorized under section 6420(e)(2), 6421(f)(2), 6424(d)(2), 6427(f)(2), or 7602.

Sec. 7210. Failure to obey summons

Any person who, being duly summoned to appear to testify, or to appear and produce books, accounts, records, memoranda, or other papers, as required under sections 6420(e)(2), 6421(f)(2), 6424(d)(2), 6427(f)(2), 7602, 7603, and 7604(b), neglects to appear or to produce such books, accounts, records, memoranda, or other papers, shall, upon conviction thereof, be fined not more than \$1,000, or imprisoned not more than 1 year, or both, together with costs of prosecution.

Exhibit 300-14 Cont. (3)**Form 2039-B****NOTICE TO THIRD-PARTY RECIPIENT
OF IRS SUMMONS**

As a third-party recipient of a summons, you may be entitled to receive payment for certain costs directly incurred which are reasonably necessary to search for, reproduce or transport records in order to comply with a summons.

This payment is made only at the rates established by the Internal Revenue Service to certain persons served with a summons to produce records or information in which the taxpayer does not have an ownership interest. The taxpayer to whose liability the summons relates and the taxpayer's officer, employee, agent, accountant, or attorney are not entitled to this payment. No payment will be made for any costs which you have charged or billed to other persons.

The rate for search costs is \$5 an hour or fraction of an hour and is limited to the total amount of personnel time spent in locating and retrieving documents, or information requested by the summons. Specific salaries of such persons may not be included in search costs. In addition, search costs do not include salaries, fees, or similar costs for analysis of material or for managerial or legal advice, expertise, research, or time spent for any of these activities. If itemized separately, search costs may include the actual cost of extracting information stored by computer in the format in which it is normally produced, based on computer time and necessary supplies; however, personnel time for computer search may be paid for only at the Internal Revenue Service rate specified above.

The rate for reproduction costs for making copies or duplicates of summoned documents, transcripts,

and other similar material is 10 cents for each page. Photographs, films, and other materials are reimbursed at cost.

The rate for transportation costs is the same as the actual cost necessary to transport personnel to locate and retrieve summoned records or information, or costs incurred solely by the need to transport the summoned material to the place of examination.

In addition to payment for search, reproduction, and transportation costs, persons who appear before an Internal Revenue Service officer in response to a summons may request payment for authorized witness fees and mileage fees. You may make this request by contacting the Internal Revenue Service officer or by claiming these costs separately on the itemized bill or invoice as explained below.

Instructions For Requesting Payment

After the summons is served, you should keep an accurate record of personnel search time, computer costs, number of reproductions made, and transportation costs. When you are notified that the summons has been satisfactorily complied with, you may submit an itemized bill or invoice to the Internal Revenue Service officer before whom you were summoned to appear, either in person or by mail to the address furnished by the Internal Revenue Service officer. Please write on the itemized bill or invoice the name of the taxpayer to whose liability the summons relates.

If you have any questions about the payment, please contact the Internal Revenue Service officer before whom you were summoned to appear.

Anyone submitting false claims for payment is subject to possible criminal prosecution.