



United States Attorneys' Manual

Tax Division

Title 6

1984 USAM (superseded)

FOR USE OF ADMINISTRATIVE OFFICER

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6-1.000 INTRODUCTION

The Assistant Attorney General in charge of the Tax Division, subject to the general supervision of the Attorney General and under the direction of the Associate Attorney General, is responsible for conducting, handling, or supervising tax matters, as more particularly described in 28 C.F.R. §0.70.

The Tax Division, under the direction of the Assistant Attorney General, supports and coordinates tax litigation. The closest possible cooperation between the offices of the U.S. Attorneys and the Tax Division is highly desirable to insure that tax litigation for the United States is handled in an expeditious and professional manner. The information in this manual is designed to describe the kinds of litigation that the Tax Division has encountered over the years and to explain in some detail the interrelationship of the U.S. Attorneys' offices and the Division in particular kinds of cases.

The Department of Justice, including the U.S. Attorneys, is responsible for the conduct of all phases of federal tax litigation in the federal courts, including the prosecution of criminal tax cases, tax claims in bankruptcy, probate and insolvency proceedings as well as the defense of mortgage foreclosure suits involving tax liens, the initiation of collection suits against delinquent taxpayers, refund litigation, enforcement of administrative summonses and other matters. All federal litigation wherein the United States is a party must be handled by attorneys who are either employed by the Department of Justice or are authorized by it to represent the United States.

6-1.010 No Direct Authority to Use Internal Revenue Service Attorneys

The authority to conduct litigation in which the United States or an agency or officer of the United States is a party or is interested is vested in the U.S. Attorneys and the litigating divisions of the Department of Justice, 28 U.S.C. §516. When U.S. Attorneys are unable because of personnel shortages or for other uncontrollable circumstances to staff tax cases for which their offices have litigation responsibilities, the Tax Division should be contacted and assistance requested. In the event that the Tax Division is unable to provide such assistance, it will undertake aid the U.S. Attorney in preparing the paperwork necessary to have an Internal Revenue Service Attorney appointed as a Special Assistant U.S. Attorney as an interim measure until the crisis is over.

In a district in which an IRS District Counsel office is located, special arrangements can be made with the concurrence of the Tax Division, the U.S. Attorney and the District Counsel to have one or more District Counsel attorneys appointed as Special Assistant U.S. Attorneys to handle certain bankruptcy matters.

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6-1.020 Other Relevant Manuals for U.S. Attorneys

In addition to this Manual, U.S. Attorneys have been furnished with the Tax Division's Manual for Collection of Tax Judgments and a manual concerning the award of attorneys' fees and related expenses under Internal Revenue Code Section 7430 entitled "Guidelines--Awards Under Section 7430 of the Internal Revenue Code." A manual entitled "Institute on Criminal Tax Trial--1983" is also available by a request directed to the Chief of the Criminal Section. These publications should be of assistance to United States Attorneys and their staffs in the conduct of tax litigation. However, this Title of the United States Attorneys' Manual will prevail in any instance where any other manual is in derogation or conflict.

6-1.030 Citations

Unless otherwise specified, all citations in this Title are to the Internal Revenue Code of 1954, Title 26 of the United States Code.

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6-2.000 CRIMINAL TAX PRACTICE AND PROCEDURE

6-2.010 The Federal Tax Enforcement Program

The federal tax enforcement program is designed to protect the public interest in preserving the integrity of this nation's self-assessment tax system through vigorous enforcement of the internal revenue laws. The purpose of a criminal tax prosecution is to expose the wrongdoer, thereby deterring other potential tax violators. Obviously, the most effective deterrent to would-be violators is successful prosecution coupled with a sentence commensurate with the gravity of the offense.

The government's objective in criminal tax prosecutions is to get the maximum deterrent value from the cases prosecuted. To achieve this objective the government's tax enforcement activities must reflect uniform enforcement of the tax laws. Uniformity is particularly necessary because prosecution standards in the tax area potentially affect more individuals than in any other area of the law. Accordingly, the federal tax enforcement program is designed to have the broadest possible impact on compliance attitudes by emphasizing balanced enforcement, not only with respect to the types of violations prosecuted, but also the geographic location and economic and vocational status of the violators.

In view of the importance of a uniform prosecution program, the Tax Division has been delegated the responsibility of authorizing or declining investigation and prosecution in criminal tax matters. See USAM 6-2.211. However, the tax enforcement program can only work effectively if the Internal Revenue Service, Department of Justice and U.S. Attorneys work in harmony. The following guidelines are intended to harmonize this effort.

6-2.100 INVESTIGATIVE AUTHORITY AND PROCEDURE

6-2.110 IRS Administrative Investigations

The Internal Revenue Service's Criminal Investigation Division (CID) is responsible for investigating violations of the criminal provisions of the internal revenue laws. CID's jurisdiction includes the investigation of alleged criminal violations arising under the Internal Revenue Code of 1954 (except those relating to alcohol, tobacco, and firearms taxes, and certain of the violations punishable under Sections 7212(a), 7213(a), and 7214(a) of the Code) and related violations of the criminal provisions of Title 18 of the United States Code.

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CID special agents are responsible for conducting administrative investigations of alleged criminal violations arising under the internal revenue laws. To enable special agents to fulfill this responsibility, they are authorized to administer oaths under IRC Section 7622 and to take testimony of witnesses and examine books and records under IRC Section 7602. Special agents are also authorized to serve summonses and subpoenas and to execute search and arrest warrants. IRC Section 7608.

6-2.111 Origin of IRS Administrative Investigations

CID investigations are generally initiated as a result of one of the following:

- A. Fraud referrals from other divisions within IRS;
- B. Information provided by other government agencies;
- C. Information provided by private parties;
- D. Matters or projects developed within CID.

Matters found to have criminal fraud prosecution potential, or deemed to warrant further inquiry, are approved for investigation and pursued by special agents to the extent available resources permit.

6-2.112 IRS Joint Administrative Investigations

Joint investigations are conducted by special agents in cooperation with representatives of other IRS divisions. Matters are usually investigated jointly with revenue agents (Examination Division) when false returns are filed or when a willful failure to file occurs. Joint investigations with revenue officers (Collection Division) usually evolve from a willful failure to pay tax.

6-2.113 IRS Review of Administrative Investigations

Upon concluding an administrative investigation a special agent recommending prosecution must prepare a special agent's report (SAR) that details the investigation, its results, and the agent's recommendations. After review within CID, the SAR, together with the exhibits, is reviewed by District Counsel. When prosecution is deemed warranted, District Counsel prepares a criminal reference letter (CRL) that discusses the nature of the crime for which prosecution is recommended, the evidence relied upon to

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prove it, technical aspects and anticipated difficulties of prosecution, and the prosecution recommendations themselves.

6-2.114 IRS Referral of Reports and Exhibits from Administrative Investigations

Affirmative recommendations for prosecution or prosecution-related action in matters under the investigative jurisdiction of CID are referred to the Department of Justice, Tax Division, or, where the Tax Division has authorized, directly to U.S. Attorneys for the jurisdictions where venue most appropriately lies. IRC §6103(h). Such referrals generally include a CRL, SAR, and sufficient relevant exhibits to permit thorough analysis of the matters to reevaluate prosecutive merit. Where matters are referred to the Tax Division, a copy of the CRL will be forwarded simultaneously to the appropriate U.S. Attorney. Likewise, where matters are directly referred to the Tax Division, a copy of the CRL will be forwarded simultaneously to the the Tax Division.

6-2.115 Effect of IRS Referral on Administrative Investigations

Referral of a matter to the Tax Division terminates IRS authority to use administrative process to further investigate the matter referred. IRC Section 7602(c).

6-2.116 Effect of DOJ Declination on Administrative Investigations

Declination of a matter referred for prosecution to the Tax Division permits IRS to take whatever administrative action it feels is appropriate under the circumstances, including further investigation by CID. See IRM 9652. Administrative process is available to the special agent conducting such further investigation. IRC §7602(c). The Service may, if warranted, resubmit the matter to the Tax Division as a new referral.

6-2.120 Grand Jury Investigations

Although a federal grand jury is empowered to investigate both tax and nontax violations of federal criminal laws, use of the grand jury to investigate criminal tax violations must first be approved and authorized by the Tax Division. 28 C.F.R. §0.70; IRC §6103(h).

6-2.121 IRS Requests to Initiate Grand Jury Investigations

CID generally relies on the administrative process to secure evidence

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during an investigation. However, where CID is unable to complete its administrative investigation, or otherwise determines that use of administrative process is unfeasible, it may request a grand jury investigation.

Procedurally, the request must include an SAR, a CRL, and whatever exhibits are available to support the request. See IRM 9267.2 et seq. Because this request is a referral of the matter to the Tax Division, CID may no longer use administrative process. See USAM 6-2.115.

6-2.122 U.S. Attorney Initiated Grand Jury Investigations

A. IRS Direct Referrals

Although the U.S. Attorney is authorized to conduct a Title 26 grand jury investigation in direct referral matters, the instances where such referrals require grand jury investigation will be rare. See USAM 6-2.243(A).

B. Tax Division Referrals for Prosecution

The U.S. Attorney is authorized to conduct a Title 26 grand jury investigation into matters referred for prosecution by the Tax Division to the extent necessary to perfect the tax charges authorized for prosecution.

C. Tax Division Referrals for Grand Jury Investigation

The U.S. Attorney is authorized to conduct a Title 26 grand jury investigation into matters referred for that purpose by the Tax Division, whether upon IRS (see, USAM 6-2.121) or Tax Division (see, USAM 6-2.126) request, to the extent necessary to either perfect the tax charges authorized for investigation or determine that prosecution is inappropriate. See USAM 6-2.242.

D. Joint Tax-Nontax Investigations with IRS Participation

The U.S. Attorney must secure Tax Division approval before expanding a nontax grand jury investigation to include tax violations where IRS held tax information is sought for tax purposes and participation by IRS is desired. Trea. Reg. Section 301.6103(h)(2)-1. Initially, the U.S. Attorney must obtain a service commitment of manpower to assist in the grand jury investigation. This is done by submitting a written request for IRS participation to the District Director. If approved, the request will be forwarded, except in task force situations, through Regional Counsel (Criminal Tax) as a referral to the Tax Division where it will be promptly

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reviewed upon receipt. The Tax Division will notify the U.S. Attorney of the Title 26 authorization or declination by letter or, if time does not permit, orally with a confirming letter following such notification.

See USAM 6-2.125 for task force procedures.

6-2.123 Joint U.S. Attorney-IRS requests to expand grand jury investigations

The U.S. Attorney must secure Tax Division approval before expanding a Title 26 grand jury investigation to include targets not authorized by the Tax Division. A written request for expanded authorization must be submitted prior to initiating that phase of the grand jury investigation. The request must establish the basis for Tax Division authorization to expand the investigation. See USAM 6-2.213(A)(2).

6-2.124 Strike Force Requests

See USAM 6-2.122.

6-2.125 Task Force Requests

Matters for grand jury investigation involving tax which fall within the jurisdiction of a Presidential Narcotics Task Force (task force) are distinguished from similar matters for grand jury investigation handled by a U.S. Attorney only in that processing within IRS is streamlined. Regional Counsel (Criminal Tax) does not become involved in task force referrals or recommendations. Task force requests for joint tax-nontax investigation with IRS participation need to be approved by the district director, who then makes a referral directly to the Tax Division. See USAM 6-2.122(D). Likewise, once the investigation has been concluded, recommendations for or against prosecution are submitted directly to the Tax Division by the district director. See USAM 6-2.127. In all other respects, tax matters within the jurisdiction of a task force are procedurally indistinguishable from other tax matters.

6-2.126 Tax Division Requests

Grand jury authorization may originate within the Tax Division during evaluation of IRS referrals for prosecution.

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6-2.127 IRS Transmittal of Reports and Exhibits from Grand Jury
Investigations

Recommendations for prosecution of Title 26 violations resulting from grand jury investigations must be submitted to the Tax Division for authorization. See USAM 6-2.211. When an investigation has produced sufficient evidence to merit indictment, the U.S. Attorney should have the special agent assigned to the matter prepare an SAR, attach the relevant exhibits, and, except in task force situation, send it to Regional Counsel (Criminal Tax) for review and Counsel's recommendation to the Tax Division. Regional Counsel has requested that it be allowed thirty (30) days to review the matter prior to making any recommendation; the Tax Division should be allowed sixty (60) days to review the proposed prosecution recommendation. The U.S. Attorney's views should also be forwarded to the Tax Division. See USAM 6-2.242.

The Service must also transmit recommendations against prosecution (or matters without IRS recommendation) resulting from such grand jury investigations to the Tax Division for evaluation. See IRM 9267-5; see also, USAM 6-2.242.

See USAM 6-2.125 for task force procedures.

6-2.128 IRS Access to Grand Jury Material

All IRS personnel to whom grand jury material has been disclosed must be named in a list provided by the U.S. Attorney to the district court which empanelled the grand jury whose material has been so disclosed. Rule 6(e)(3)(B), FED.R.CRIM.P. Grand jury material is disclosed to IRS personnel under the following conditions:

A. Grand jury material remains under the aegis of the U.S. Attorney and/or Tax Division;

B. Disclosure of grand jury material may be made only to IRS personnel assisting the government attorney in the criminal investigation and only for the purpose of enforcing federal criminal law; and

C. All grand jury material, and any copies made thereof, must be returned to the U.S. Attorney or Tax Division at the conclusion of the grand jury investigation.

6-2.129 Effect of DOJ Termination of Grand Jury Investigations on IRS
Access to Grand Jury Material

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See USAM 6-2.116. IRS access to grand jury material may be accomplished for use in an administrative investigation only in accordance with Rule 6(e)(3)(C)(i), Fed.R.Crim.P. United States v. Baggot, U.S. (No. 81-1938, decided June 30, 1983).

6-2.200 PROSECUTORIAL AUTHORITY AND PROCEDURE

6-2.210 Tax Division Responsibility

6-2.211 Tax Division Jurisdiction

The Assistant Attorney General, Tax Division, has responsibility for all criminal proceedings arising under internal revenue laws except the following: proceedings pertaining to misconduct of IRS personnel; taxes on liquor, narcotics, firearms, coin-operated gambling and amusement machines, and to wagering; forcible rescue of seized property (26 U.S.C. §7212(b)); corrupt or forcible interference with an officer or employee acting under the internal revenue laws (26 U.S.C. §7212(a)); unauthorized disclosure of information (26 U.S.C. §7213); and counterfeiting, mutilation, removal or reuse of stamps (26 U.S.C. §7208). See 28 C.F.R. §0.70.

The Criminal Section of the Tax Division handles all criminal matters within the responsibility of the Tax Division with one exception; the Tax Division's Office of Special Litigation is responsible for criminal contempt proceedings arising out of violations of injunctions relating to abusive tax shelter schemes (26 U.S.C. §§7402, 7407 and 7408). See USAM 6-3.022.

6-2.212 Delegation of Authority Within Criminal Section

See DQJ Directive No. 44, 48 Fed. Reg. 22017 (May 16, 1983).

6-2.213 Review

A. Standards for Review

1. Prosecutions

The standards underlying review of criminal tax matters for authorization of prosecution require evidence supporting a prima facie case and a reasonable probability of conviction. Other considerations influencing authorization for prosecution are in accordance with the dictates of the federal tax enforcement program. See generally USAM 6-2.010; see also USAM 6-2.310.

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2. Grand Jury Investigations

The standards underlying review of criminal tax matters for authorization of grand jury investigations require articulable facts supporting a reasonable belief that a tax crime is being or has been committed.

B. Categories of Matters Reviewed

1. IRS Referrals

In November, 1980, the Tax Division initiated a procedure to expedite the review of criminal tax matters referred from IRS while maintaining uniformity of prosecution standards. See USAM 6-2.114 and 6-2.121. Under this procedure, such matters are designated as either complex or noncomplex.

a. Complex Matters

Complex matters are those IRS referrals which utilize an indirect method of proof, are factually or legally complex, contain technical and/or sensitive tax issues, or involve a policy issue. Complex matters are reviewed by Criminal Section docket attorneys in accordance with the standards set forth at USAM 6-2.213(A). Docket attorneys prepare prosecution memoranda analyzing the evidence, highlighting procedural and/or substantive problems and discussing recommendations for further action. The matters are further reviewed by one or more Criminal Section senior attorneys whereupon a final decision to prosecute or decline prosecution is made. See USAM 6-2.212 and 6-2.141.

b. Noncomplex Matters

Noncomplex matters are those IRS referrals in which the specific items method of proof is used. Noncomplex matters are screened by senior Criminal Section attorneys to ensure that no issues requiring in-depth review are present. Should the screening procedure reveal such issues, the matters are referred to docket attorneys for in-depth review. Otherwise, the matters are transmitted within two weeks to the appropriate U.S. Attorney for consideration within ninety (90) days. See USAM 6-2.244.

2. U.S. Attorney Requests for Grand Jury Authorization

See USAM 6-2.122(D) and 6-2.123. Requests for Title 26 grand jury authorizations are approved or denied by Criminal Section personnel in accordance with the standards set forth at USAM 6-2.213(A). See USAM 6-2.212.

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C. Review of Direct Referrals

To ensure national uniformity of prosecution standards, the Tax Division monitors all matters directly referred to U.S. Attorneys. See USAM 6-2.243(B). Should such review reveal that a matter was improperly referred, the Tax Division will so notify the U.S. Attorney.

6-2.214 Conferences

Conferences are not a matter of right but, if requested, are generally granted.

A. Purpose

A conference is designed to provide the putative defendant an opportunity to present any explanations or evidence which he desires the Tax Division to consider in reaching a decision regarding prosecution. A conference is not an opportunity to explore the government's evidence. The Division's practice regarding "discovery" is to advise conferees of the proposed charges, method of proof and income and tax figures recommended by IRS. The putative defendant is also advised that the charges, method of proof and computations are subject to change. Statements made by him or on his behalf will be used not only to evaluate the matter but also in any court proceeding, criminal or civil. Rule 801(d)(2), Fed. R. Evid.

B. Procedure

Normally, if time and circumstances permit, a conference in Washington, D.C., is granted upon a written request to the Tax Division from a taxpayer or the taxpayer's authorized representative. However, if the matter has been forwarded to the U.S. Attorney before the request is received, the request will be denied with the suggestion that the taxpayer seek a conference with the U.S. Attorney. Such conference is granted at the discretion of the U.S. Attorney. In unusual circumstances the Tax Division may request that a conference be held and that the U.S. Attorney submit a report regarding any recommended changes in the authorization.

6-2.215 Expedited Reviews

An expedited review is one wherein the Tax Division will render a final decision regarding prosecution within thirty (30) days of receipt from IRS of the CRL, SAR, and relevant exhibits. In exceptional circumstances when the U.S. Attorney finds that a given matter cannot be processed within the Division's stated guidelines, the U.S. Attorney personally must submit a

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written request to the Chief, Criminal Section, requesting an expedited review. The request must outline whatever difficulties exist requiring such expedited review. An expedited review will be granted only when such difficulties are shown to be exceptional circumstances.

6-2.216 Priority Reviews

A priority review is one wherein the Tax Division will render a final decision regarding prosecution within sixty (60) days of receipt from IRS of the CRL, SAR, and relevant exhibits. A request for a priority review must be made in writing by an Assistant U.S. Attorney and will be granted under the circumstances referred to in USAM 6-2.215.

6-2.217 On-Site Reviews

Criminal Section personnel will perform on-site reviews of task force matters in appropriate circumstances. On-site reviews, either of grand jury investigations or prosecution recommendations, are only granted in exceptional circumstances and through the written request procedure outlined in USAM 6-2.215.

6-2.218 Authorizations and Declinations

The final authority for the prosecution of all criminal tax matters rests with the Assistant Attorney General, Tax Division. 28 C.F.R. §0.70. See USAM 6-2.212.

6-2.219 Assistance of Criminal Section Personnel

The Tax Division will consider requests by the U.S. Attorney for assistance. Reasons for requests for trial assistance include those instances when the U.S. Attorney:

- A. Recuses himself/herself and his/her office;
- B. Lacks sufficient resources or manpower; or
- C. Declines to prosecute a matter (see USAM 6-2.245(A)).

The U.S. Attorney is generally expected to handle those matters accepted for prosecution under the noncomplex procedures. See USAM 6-2.244.

6-2.240 U.S. Attorney's Responsibility

The U.S. Attorney is normally responsible for investigation and prosecution of criminal tax matters after authorization by the Tax Division. See USAM 6-2.221.

6-2.241 Review of CRLs

The U.S. Attorney will receive a copy of CRLs in any matters under the investigative jurisdiction of CID and referred to the Tax Division for prosecution or prosecution-related action when venue for charges recommended in the referral falls within the U.S. Attorney's district. See USAM 6-2.114 and 6-2.121. The U.S. Attorney may desire to review the matter and communicate his/her views to the Tax Division within twenty-one (21) days of receipt of the CRL, or within such shorter period as may be necessitated by an impending expiration of the statute of limitations or other exigent circumstance. When no comments are received within three weeks, the Tax Division will assume that the U.S. Attorney does not wish to express his/her views regarding the prosecution potential of the matter.

6-2.242 Recommendation on Grand Jury Investigations

At the conclusion of a grand jury investigation authorized by the Tax Division, the U.S. Attorney conducting the investigation should submit an analysis of the investigation to the Tax Division and recommend either that charges be brought or prosecution be declined. If nontax charges are recommended, the analysis must explain how these nontax charges relate to the tax charges. A copy of the proposed indictment or information should accompany the analysis. In addition to the U.S. Attorney's analysis, all relevant exhibits generated during the course of the grand jury investigation, the transcripts of the proceedings, and the CRL and SAR must be submitted. See USAM 6-2.127, the Tax Division must receive this material at least sixty (60) days prior to the expiration of the statute of limitations unless the Division has already agreed to handle the matter in accordance with USAM 6-2.215.

6-2.243 Review of Direct Referral Matters

A. Purpose of Direct Referral Program

The direct referral program is designed to promote the rapid

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prosecution of matters that constitute an imminent drain on the U.S. Treasury. Because immediate action is often required, IRS is authorized to directly refer those matters listed at USAM 6-2.243(B).

B. Type of Matters Directly Referred

The Tax Division has authorized IRS to refer the following categories of matters directly to the U.S. Attorney for prosecution:

1. excise taxes - all IRC and Title 18 offenses involving taxes imposed by Subtitles C, D and E, except Chapter 24;
2. multiple filings of false and fictitious returns claiming refunds (18 U.S.C. §§286 and 287) - all offenses wherein taxpayer files two or more returns for a single tax year claiming false refunds, excluding return preparers who falsify returns to claim refunds;
3. trust fund matters (26 U.S.C. §§7215 and 7512) - offenses involving alleged violations of the trust fund laws;
4. "ten percenter" matters (26 U.S.C. §7206(2)) - when arrest occurs contemporaneously with the offense.

C. Authority to Prosecute Direct Referrals

The U.S. Attorney may initiate or decline prosecution of direct referrals without prior approval from the Tax Division (whereas in all other instances the U.S. Attorney can initiate proceedings only with specific Tax Division authorization). However, once prosecution has been initiated, the indictment, information or complaint may not be dismissed without the prior approval of the Tax Division. See USAM 6-2.246.

6-2.244 Review of Noncomplex Matters

Within three months of receipt of a designated noncomplex matter, the U.S. Attorney is to review the matter and initiate proceedings, request that the matter be declined (see, USAM 6-2.245), or request that the Tax Division handle the matter (see, USAM 6-2.219).

6-2.245 Requests to Decline Prosecution

A. Request by U.S. Attorney

Whenever the U.S. Attorney feels that a particular tax matter

should not be prosecuted, those views are to be forwarded to the Tax Division. The Assistant Attorney General will then consider the matter and determine whether the matter should be prosecuted or declined. If it is determined that the matter should be prosecuted, the U.S. Attorney will be requested to proceed. If the U.S. Attorney declines to proceed, the matter will be handled by the Criminal Section personnel. Notice that the U.S. Attorney desires not to proceed must be received sufficiently in advance of the expiration of the statute of limitations or any other deadlines to allow adequate consideration by the Division and adequate time for preparation by Division personnel.

B. Grand Jury No Bill

Once a grand jury returns a no bill or otherwise acts on the merits in declining to return an indictment, the same matter (*i.e.*, the same transaction or event and the same putative defendant) must not be presented to another grand jury or represented to the same grand jury without first securing the approval of the Assistant Attorney General, Tax Division. Ordinarily such approval will not be given in the absence of additional or newly-discovered evidence or a clear circumstance of a miscarriage of justice.

6-2.246 Requests to Dismiss Prosecution

Indictments, informations and complaints may not be dismissed without prior approval of the Tax Division except when a superceding indictment has been returned or the defendant has died. Requests to dismiss prosecution are the personal responsibility of the U.S. Attorney and all requests relating thereto must accordingly be signed. Form USA-900 may be used for this purpose.

6-2.247 U.S. Attorney Protest of Declinations

If in disagreement with the Tax Division's decision to decline prosecution of a matter arising out of a grand jury investigation, the U.S. Attorney may request reconsideration of that determination. Such request must be in writing and set forth the U.S. Attorney's reasons for desiring to proceed with the prosecution.

The Tax Division will not entertain protests by the U.S. Attorney of matters which were administratively investigated by the IRS. See USAM 6-2.241.

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6-1.270 Criminal Division Responsibility

The Criminal Division has limited responsibility for the prosecution of offenses investigated by IRS. Those offenses are: excise violations involving liquor tax, narcotics, stamp tax, firearms, wagering, and coin operated gambling and amusement machines; malfeasance offenses committed by IRS personnel; forcible rescue of seized property; corrupt or forcible interference with an officer or employee acting under the internal revenue laws; and unauthorized mutilation, removal or misuse of stamps. See 28 C.F.R. §0.70.

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6-3.000 CIVIL TAX CASES

6-3.010 General

The Tax Division has jurisdiction over the subject matter of civil tax litigation in federal and state courts. Civil litigation within the jurisdiction of the Tax Division is supervised, supported, coordinated or handled as appropriate, by four Civil Trial Sections, a Claims Court Section, which handles litigation in the Claims Court and an Office of Special Litigation, which handles tax-shelter related litigation. The Civil Trial Sections are known as Civil Trial Section, Northern Region; Civil Trial Section, Central Region; Civil Trial Section, Southern Region; and, Civil Trial Section, Western Region. The states or districts for which each section is responsible are set forth in USAM 6-3.020. Exceptions to the geographical assignment of cases are set out in USAM 6-3.022 and 6-3.023.

Trial responsibility normally reposes with the U.S. Attorney in cases arising under 28 U.S.C. §2410 (except for interpleader litigation) and in actions to enforce Internal Revenue summonses as set forth in USAM 6-3.231, 6-3.232 and 6-3.322, infra. Proceedings to quash Section 7609 summonses will normally be handled by Tax Division attorneys. See USAM 6-3.250 infra.

In refund litigation, trial responsibility normally reposes in the Civil Trial Sections or in the Office of Special Litigation as set forth in USAM 6-3.610 and 6-3.670, infra.

Except for the responsibility of the U.S. Attorney for filing notice of appeal or cross-appeal as provided in USAM 2-2.130, supra, when civil matters are assigned to, and handled by, personnel of the Tax Division, the Division has the responsibility for the handling of the case in the trial court, including all correspondence, motions, responses, briefs and trial of the case. For administrative and informational purposes, the Division should keep the U.S. Attorney advised of the progress of such matters by forwarding to him/her copies of correspondence and pleadings served on opposing counsel. The U.S. Attorney shall immediately forward to the assigned Tax Division trial attorney copies of all correspondence, pleadings, briefs, notices (including scheduled court appearances), etc., received and served on the U.S. Attorney, unless such communication clearly indicates service on such civil trial attorney. The U.S. Attorney should

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also advise the appropriate civil trial attorney of any informal information received that may have a bearing on the just disposition of the case. Where civil matters are assigned to the U.S. Attorney, he/she shall be responsible for the entire proceeding, including the filing of all pleadings and representation at all proceedings and shall keep the Tax Division advised in the manner as set forth in this Manual. The Division and the U.S. Attorney should confer with each other with respect to the position to be taken in civil cases, and utilize such assistance as may be mutually agreeable between the Division and the U.S. Attorney. Notwithstanding the assignment of case responsibilities, the Division and the U.S. Attorney should cooperate in assisting each other by taking complementary steps to protect fully the interests of the United States and to assure the successful prosecution of the litigation.

However, nothing contained in this Manual shall diminish the authority of the Assistant Attorney General, Tax Division, to exercise his/her prerogative to reassign any civil tax case within the jurisdiction of the Tax Division.

6-3.020 Organization

6-3.021 Civil Trial Sections

Except as provided in USAM 6-3.022 and 6-3.023, the Civil Trial Sections have jurisdiction over all civil tax litigation within their assigned areas. The states or districts assigned to the various Civil Trial Sections are as follows:

A. CIVIL TRIAL SECTION, NORTHERN REGION FTS 724-6533

Connecticut	Maine	New Hampshire	Ohio
Illinois	Massachusetts	New Jersey	Rhode Island
Indiana	Michigan	New York	Vermont

B. CIVIL TRIAL SECTION, SOUTHERN REGION FTS 724-6407

Alabama	Georgia	North Carolina	South Carolina
Arkansas	Louisiana	New Mexico	Tennessee
Florida	Mississippi	Oklahoma	Texas

C. CIVIL TRIAL SECTION, CENTRAL REGION FTS 724-6426

District of Columbia	Kentucky	Virginia	Puerto Rico
Delaware	Pennsylvania	West Virginia	Virgin Islands

D. CIVIL TRIAL SECTION, WESTERN REGION FTS 724-6413

Alaska	Missouri	Hawaii	Oregon
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Arizona	Montana	Idaho	South Dakota
California	Nebraska	Iowa	Utah
Colorado	Nevada	Kansas	Washington
Guam	North Dakota	Minnesota	Wisconsin
			Wyoming

Except as otherwise instructed, documents mailed to the Civil Trial Sections should be addressed as follows:

Civil Trial Section, _____
Tax Division
Department of Justice
Washington, D.C. 20530

6-3.022 Office of Special Litigation

The Office of Special Litigation is responsible for all civil litigation involving organizers, promoters and sellers of abusive tax shelters and other abusive tax schemes. The primary work of the office involves suits to enjoin tax shelter and other abusive tax schemes and the prosecution of contempt cases (civil and criminal) resulting from violations of such injunctions. In addition, the office handles a variety of other suits connected with IRS investigations of abusive tax shelter schemes, including the defense of suits to enjoin the assessment of penalties against promoters (26 U.S.C. §§6700 and 6701) or to enjoin the mailing of pre-filing notices to investors, proceedings under Section 7429 to review jeopardy assessments of penalties against promoters, the enforcement or defense of summons cases, the defense of damage actions on a Bivens theory or under Section 7431 (unauthorized disclosure of tax information), motions for return of property under Rule 41(e) of the Federal Rules of Criminal Procedure, and refund suits involving penalties for organizing and selling abusive tax shelters, including penalties for aiding and abetting an understatement of tax liability and penalties for violating the tax shelter registration requirements.

IRS abusive tax shelter investigations are highly sensitive, and the Chief, Office of Special Litigation, should be notified by telephone (FTS 272-6572) as soon as the U.S. Attorney is served in any suit to enjoin IRS actions regarding a tax shelter or when Rule 41(a) motion for return of property is filed against the United States in connection with a tax shelter investigation.

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Documents mailed to the Office of Special Litigation should be addressed as follows:

Office of Special Litigation
Post Office Box 7238
Washington, D.C. 20033

6-3.023 Special Interest Cases

The Civil Trial Section, Central Region, has been assigned the responsibility for all tax-related litigation involving the Freedom of Information Act or the Privacy Act, suits relating to taxation of the federal government, its agents or contractors, and damage actions under Section 7431 for unauthorized disclosure of tax information (except in cases connected with abusive tax shelter investigations). Special assignments are also made to the section, particularly in cases challenging Treasury regulations or IRS rulings without reference to a specific tax assessment or to liability in a particular case.

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6-3.100 TAX COLLECTION SUITS

6-3.110 In General

6-3.111 Origin and Authorization

Actions to collect taxes on behalf of the government originate by a request and authorization from a delegate of the Secretary of the Treasury, and are brought at the direction of the Attorney General, pursuant to Section 7401. The authority of the Secretary of the Treasury to authorize and request such suits has been delegated to the Chief Counsel of the Internal Revenue Service. The Chief Counsel requests the commencement of a collection action, whether it be to reduce the assessment to judgment or to foreclose the tax lien on specific property, by a letter addressed to the Assistant Attorney General in charge of the Tax Division. These requests are routed to the chief of the appropriate Civil Trial Section who assigns them to individual attorneys for handling. An attorney in the appropriate Civil Trial Section drafts the complaint and then forwards the pleading, with a detailed letter setting out a statement of the facts and citing the pertinent authorities, to the U.S. Attorney. The U.S. Attorney should promptly forward advice as to the date the complaint was filed.

Occasionally, emergencies will arise when it may not be possible to obtain in writing the authorization of the Attorney General in advance of institution of the suit because of statute of limitations requirements or other need to assert the tax claims promptly. In those instances, the U.S. Attorney will either be authorized by telephone to prepare and file the complaint, or the complaint will be telephoned or wired to the U.S. Attorney's office for filing, with written authorization to follow. Occasionally, the Internal Revenue Service's local office may contact the U.S. Attorney's office directly with a request to institute suit due to time limitations, but complaints should not be filed on an emergency basis without prior approval of the chief of the appropriate Civil Trial Section.

6-3.112 Service of Process

Service of process upon defendants residing within the state wherein the action is filed should be made in accordance with the provisions of Rule 4, Fed. R. Civ. P.

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Many states have enacted so-called "long arm statutes" providing for service outside of the state on persons who have had certain types of contacts within the state. By virtue of Rule 4(e) and 4(i), Fed. R. Civ. P., these state statutes can be invoked to obtain personal service outside of the state in which the district court is located and even outside of the United States.

In any case in which it is determined that service should be attempted outside of the United States, the matter should be referred to the Tax Division and the U.S. Attorney should not seek to obtain such service without prior reference to the Tax Division.

6-3.113 Writ of Ne Exeat

Writs of ne exeat republica are expressly authorized by Section 7402(a). General authority for the federal courts to issue such writs is found in 28 U.S.C. §1651. A writ of ne exeat is one which issues from a court to restrain a person from going beyond the limits of the jurisdiction of the court until the person has satisfied the plaintiff's claim or has given bond for the satisfaction of the decree of the court. This remedy is used infrequently and should not be sought without prior approval of the Tax Division.

6-3.114 Venue

A civil action seeking only a personal judgment for internal revenue taxes may be brought in the district where the liability for such taxes accrues, in the district of the taxpayer's residence or in the district where the return was filed. 28 U.S.C. §1396.

Occasionally, after suit has been instituted in a district court, it becomes necessary to have the suit transferred to another district, e.g., if, unknown to the government, the taxpayer has moved prior to service of process and the institution of suit in the district in which the taxpayer now resides is barred by the statute of limitations. Title 28, United States Code, Section 1404(a), provides that, for the convenience of parties and witnesses, in the interests of justice, a district court upon motion or consent of the parties may transfer a civil action to any other district court or division where it might have been brought. Such a transfer may be made even in the absence of jurisdiction over the person of the taxpayer.

6-3.120 Tax Lien Foreclosure Suits

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6-3.121 Origin and Authorization

The origin and authorization of tax lien foreclosure suits is identical to that set forth in USAM 6-3.111, supra.

6-3.122 Service

The discussion in USAM 6-3.112, supra, relative to service in tax collection suits generally is also applicable in lien foreclosure suits. However, it should be noted that in an action in a district court to enforce any lien upon or claim to real or personal property or to remove any encumbrance or lien thereon where a defendant cannot be served within the state or does not voluntarily appear, an order may be obtained from the court for constructive service under 28 U.S.C. §1655.

6-3.123 Venue

Where the United States seeks to foreclose its tax liens against property, suit is instituted in the judicial district in which the real property or tangible personal property is located; if the property is an intangible, such as a debt or an account receivable, then the suit is instituted in the district where the taxpayer's debtor is located. Persons claiming an interest in or lien upon such property who reside outside of the state in which the property is located may be served pursuant to 28 U.S.C. §1655. The taxpayer also may be served pursuant to that statute when the taxpayer resides outside of the state in which the property is located.

6-3.124 Lis Pendens

If the property sought to be subjected to the tax lien in a foreclosure suit is real property and the law of the state in which the property is located requires a notice of the action or lis pendens to be filed in a designated state office to give constructive notice of the action, and the law of the state authorizes the filing of such a notice for actions in a federal district court, then state law must be complied with in order to give constructive notice of the action as it relates to the real property. 28 U.S.C. §1964.

6-3.125 Lien Priority

Usually, the first step toward collection is the assessment of the tax, which may be based either upon the return filed by the taxpayer, a Tax Court

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decision, or a determination by the Internal Revenue Service that an additional tax is due and owing. As soon as practicable after assessment, and within 60 days, the District Director is required to give notice to the taxpayer and make demand for payment pursuant to Section 6303(a). Upon the neglect or refusal of the taxpayer to pay a tax after demand, a lien automatically arises on all the taxpayer's property. 26 U.S.C. §6321. Although proof of demand is a prerequisite to the existence of the lien, the lien relates back to the time of assessment and the lien continues until the liability is satisfied or becomes unenforceable by reason of lapse of time. Section 6322. See also, United States v. Pioneer American Ins. Co., 374 U.S. 84, 88 (1963); United States v. Vermont, 377 U.S. 351, 352 (1964). If the United States secures a judgment against a taxpayer arising out of an assessed tax liability, the tax lien is not merged in the judgment but is independently enforceable until the judgment has been satisfied. Section 6322.

With respect to the priority of the federal tax lien vis-a-vis the liens of other creditors, the general rule is that the first in time is the first in right. United States v. New Britain, 347 U.S. 81 (1954). However, before an interest may compete with a federal tax lien, said interest must be choate in the federal sense. That is, the identity of the lienor, the property subject to the lien and the amount of the lien must be established. United States v. New Britain, *supra*. In addition, the federal tax lien created by Section 6321 is not valid as against any purchaser, holder of a security interest, mechanic's lienor, or judgment lien creditor until notice of the lien has been filed. Section 6323(a). The question of whether a claimant to the taxpayer's property falls within one of these protected classes is a federal question and the characterization of a particular claimant by state law as one of the protected persons is not binding on the United States. United States v. Gilbert Associates, 345 U.S. 361 (1953); United States v. R.F. Ball Construction Co., 355 U.S. 587(1958); United States v. Pioneer American Ins. Co., 374 U.S. 84, 85 (1963).

The test of first in time first in right has a further exception to it in that Section 6323(b) creates certain so-called "super priorities" and Section 6323(c) lays out special rules as to specific commercial financing agreements. If any problems arise with respect to these exceptions, please contact the appropriate Civil Trial Section.

6-3.126 Public Sale; Bidding by U.S. Attorney

In a lien foreclosure suit the court may order the sale of the property at either a public or private sale. If the court orders a public sale, then the provisions of 28 U.S.C. §2001(c) and §2002 govern the terms of the sale for real property, and 28 U.S.C. §2004 governs the terms of the sale of

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personal property. If the court orders a private sale, then the provisions of 28 U.S.C. §2001(b) govern the terms of the sale. In addition to these procedures for the sale of property, a sale of property may be held pursuant to a stipulation entered into by all; however, such an arrangement must be treated as a compromise and the approval of the Department is necessary. It is the practice in cases where it appears likely that the property may be sold at a judicially ordered public sale for less than its fair value and where the liens of the United States are prior to all other liens for the Department to suggest that the Treasury Department authorize the U.S. Attorney or an Assistant U.S. Attorney to bid on the property on behalf of the United States in accordance with 31 U.S.C. §3715. Upon receipt of the proper appointment, instructions will be given the U.S. Attorney concerning the amounts that should be bid for the property and other steps that should be taken to protect the government's interests. The deed to property so purchased for the United States will be taken in the name of the United States. The U.S. Attorney should have the deed recorded promptly and take any other action required under state law to protect the government's title. Any expense necessary should be reported to the Department on Form 25-B.

As to the right of the United States to redeem property sold at a mortgage foreclosure proceeding, see 28 U.S.C. §2410 and 26 U.S.C. §7425.

6-3.130 Intervention by the United States in Court Actions

If the United States is not party to a civil action, the United States may intervene in such action to assert a federal tax lien on property which is the subject of the action. Section 7424. Where the United States intervenes in a state court action, it has the same right of removal as is given it in cases where it is named a party to an action under 28 U.S.C. §2410(a), and removal is taken pursuant to the provisions of 28 U.S.C. §1444. Where the government's application to intervene is denied, the adjudication in such action has no effect upon the tax lien, and the lien may be enforced against the property by levy or foreclosure.

Intervention may be commenced only with the authorization of the Chief Counsel and at the direction of the Attorney General. Whether or not such action should be removed to a federal district court is normally made on an ad hoc basis. In making such a determination, consideration should be given to the complexity of the issues involved, the amount of money or value of property at issue, and the likelihood of a considered and impartial decision being regarded by the state court.

Procedures relating to intervention in state courts are governed by state law and, of course, the law of the particular state must be examined

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in each instance. If the United States, as a party, files its action in the state court, it subjects itself to the procedures and rules of decision of the forum in which it seeks relief. United States v. The Thekla 266 U.S. 328, 341 (1924); Guaranty Trust Co. v. United States, 304 U.S. 126, 144 (1938). However, the United States is not bound by laches or by state statutes of limitations. United States v. Summerlin, 310 U.S. 414 (1940).

Where the United States files a claim or intervenes in a state court proceeding, counterclaims or setoffs against the United States are governed by the same jurisdictional requirements as original actions, and jurisdiction of such claims against the United States does not exist unless there is a specific Congressional authority for it. United States v. United States Fidelity & Co., 309 U.S. 506 (1940); Nassau Smelting & Refining Works v. United States, 266 U.S. 101 (1924); United States v. Shaw, 309 U.S. 495 (1940). This proposition is applicable to suits in federal district courts also. Rule 13(d), Fed. R. Civ. P. However, setoff might be maintained against the United States under some circumstances. See United States v. Shaw, *supra*.

Appropriate pleadings will be prepared by a section attorney and forwarded to the U.S. Attorney, together with a letter of instruction, except where an emergency exists in which event instructions regarding intervention will be communicated by telephone or other means. If the local Internal Revenue Service officials request the U.S. Attorney directly to intervene because of an emergency, the chief of the appropriate Civil Trial Section should be advised in order that proper authorization for the intervention may be obtained.

6-3.140 Order for Entry to Effect Levy

The Supreme Court decision in G. M. Leasing v. United States, 435 U.S. 923 (1977), mandated substantial changes in the procedures used by the Internal Revenue Service to effect collection of a taxpayer's outstanding tax liabilities. The decision holds that the Internal Revenue Service must obtain a warrant before entering constitutionally protected premises to seize property for the payment of taxes.

Authority for the courts to issue orders for entry to effect levy is based on the Supreme Court's decision in G. M. Leasing, *supra*, and Code Section 7402(a). In re Carlson, 580 F. 2d 1365 (10th Cir.); and United States v. First National City Bank, 568 F.2d 853 (2d Cir.).

Cases involving orders of this type will be referred directly to the U.S. Attorneys by the District Counsel, Internal Revenue Service. District Counsel has been instructed to prepare the pleadings--standard forms

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consisting of an application, affidavit and proposed order--and to present the pleadings to the U.S. Attorneys' offices for review and submission to the federal district court. If the case requires any substantial deviation from these forms, please consult immediately with the appropriate section chief in the Tax Division.

Upon receipt of the material from District Counsel, the U.S. Attorney should expeditiously review the material to determine whether the legal standard for probable cause to effect a Writ of Entry has been met--assessment, notice and demand, refusal or neglect to pay, and a factual basis (probable cause) for concluding that property of the taxpayer is located on the premises. In re Carlson, supra; United States v. Shriver, Jr., 645 F.2d 221 (4th Cir. 1981). The legal standard in these cases does not require that the circumstances be exigent. However, a determination should be made that the taxpayer is, indeed, recalcitrant, and that the Revenue Officer has been unable to gain admittance to the property for purpose of seizure. The Assistant U.S. Attorney to whom the case assigned for processing should discuss the matter with the Revenue Officer to assure that the affidavit is complete and accurate and to ascertain whether there are any unusual features of the case which may lead to denial of the writ. There have been cases, for example, where the taxpayer has entered into arrangements with the Service for payment of the outstanding taxes and was not in default. For obvious reasons orders should not be sought under such circumstances.

In order to effectively support the collection efforts of the IRS, it is important that the proposed pleadings be reviewed and submitted to the court in an expeditious manner.

In some districts, judges refer applications for Writs of Entry to the local United States Magistrates. We have no objection to that procedure since it appears to fall within the rationale of Mathews v. Weber, 423 U.S. 261 (1976). The Federal Magistrates Act, 28 U.S.C. §636(b), was enacted to permit District Courts to increase the scope of responsibilities that Magistrates can undertake upon reference, as part of its plan to establish a system capable of increasing the overall efficiency of the federal judiciary.

If any difficulties are encountered, please call the appropriate section chief within the Tax Division.

6-3.200 ENFORCEMENT OF INTERNAL REVENUE SERVICE SUMMONSES

6-3.210 Authority to Issue Summonses in Determining Tax Liability

Section 7601 empowers the Secretary of the Treasury or a delegate to have Treasury officers and employees canvass each Internal Revenue Service district and inquire after and concerning all persons owning or having the care and management of any objects with respect to which any tax is imposed.

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In furtherance of this purpose, Section 7602 authorizes the Secretary of the Treasury or a delegate to issue Internal Revenue Service summonses to obtain testimony and to examine books, papers, records or other data as may be relevant to such inquiry. In addition, Section 7602 expressly authorizes issuance of a summons for a criminal purpose at any time when a Justice Department referral is not in effect.

6-3.220 Jurisdiction of District Court to Enforce Summonses

Sections 7402(b) and 7604(a) give jurisdiction to the district courts to enforce summonses issued under Section 7602.

6-3.230 Authorization to Enforce Compliance with Summonses

6-3.231 Summonses Issued by Criminal Investigation Division

Requests for the enforcement of administrative summonses issued by the Intelligence Division of the District Director's office, Internal Revenue Service, will be referred to the Tax Division through the District Counsel offices. Authorization to initiate petitions for enforcement of summonses arising out of the Criminal Investigation Division normally will be forwarded to the U.S. Attorneys by the Tax Division together with appropriate pleadings and instructions. The Tax Division should be kept advised of the progress of the proceedings to final disposition.

6-3.232 Summonses Issued by Examination or Collection Divisions

Requests for enforcement of most administrative summonses issued by the Examination Division or the Collection Division of the District Director's office, Internal Revenue Service, will be referred directly to the U.S. Attorneys through the District Counsel offices. With respect to such summonses, it will not be necessary to obtain authorization from the Tax Division prior to instituting court proceedings except in those instances where individual taxpayers or others have refused to produce records and have invoked the privilege against self-incrimination under the Fifth Amendment with respect to these records. Nonetheless, the Tax Division should be notified when such enforcement proceedings are commenced and copies of any pleadings filed should be furnished. All requests for enforcement of Examination Division or Collection Division summonses relating to matters under the jurisdiction of the Organized Crime Section of the Criminal Division will be referred to the Tax Division in the same manner as Criminal Investigation Division summonses. See USAM 6-3.231, supra.

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6-3.233 Notification Required

The U.S. Attorney should notify the Tax Division when enforcement proceedings are commenced, including furnishing copies of pleadings, and thereafter keep the Tax Division advised of the progress of such proceedings.

6-3.240 Enforcement Procedures

See 26 U.S.C. §§7602-7610.

6-3.241 Show Cause Orders

In Reisman v. Caplin, 375 U.S. 440 (1964), the Supreme Court noted (at 448) that the enforcement procedure under Section 7604(b), whereby application is made for an attachment against the person who has failed to comply with a summons "was intended only to cover persons who were summoned and wholly in default or contumaciously refused to comply." The Court also indicated disapproval of the use of the attachment procedure where there was a refusal based upon a claim of privilege. See also United States v. Powell, 379 U.S. 48 (1964). For this reason, enforcement applications should take the form of orders to show cause why the summons should not be complied with, and the attachment procedure should not be utilized without prior approval of the Tax Division.

6-3.242 Compliance with 28 U.S.C. §1691

In initiating summons enforcement proceedings of a summary nature (petition and show cause order), U.S. Attorneys are advised to insure that the provisions of 28 U.S.C. §1691, requiring that all writs and process be under the seal of the court and signed by the clerk, are complied with. Failure to do so may void the entire proceeding.

6-3.243 Prosecution Under Section 7210

Prosecution under Section 7210 for failure to obey a summons issued by the Internal Revenue Service should not be initiated without first securing specific authorization from the Tax Division. These cases should be processed by the Service and referred to the Tax Division as any other proposed tax prosecution.

6-3.250 Actions or Motions to Quash or Enjoin Internal Revenue Summonses

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In Reisman v. Caplin, supra, the Supreme Court held that no action may be brought to quash a revenue summons, or to enjoin the Revenue Service from seeking to enforce such a summons by appropriate court action. Any objections to the validity of the summons can be raised if the government institutes enforcement action. Anyone who fears he/she may be injured, if the witnesses summoned comply voluntarily, may seek to have the witness restrained from complying until ordered to do so by a federal court as a result of an enforcement action.

As a result of amendments made to section 7609 by the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. No. 97-248, Sec. 331, there is now a legislative exception to the holding of Reisman v. Caplin, supra, for summonses issued to third-party recordkeepers after December 31, 1982. The person to whom the record relate will continue to receive notice of issuance of a summons to a third-party recordkeeper. However, contrary to prior procedure of obtaining a stay of compliance merely by a written notification to the recordkeeper not to comply, the noticee can now stay compliance only by commencing a proceeding to quash in the appropriate district court within twenty days of the date on which notice is given, mailing a copy of the petition to the recordkeeper and to the office of the service designated in the notice. These procedural rules are jurisdictional and upon failure to follow these provisions meticulously, a motion to dismiss will lie.

Proceedings to quash may also be instituted with respect to another type of IRS document request, a formal document request under Code Sec. 982 for foreign-based documents. These proceedings are similar to the proceedings contemplated by amended Section 7609, except that the taxpayer is allowed 90 days from the date of the request to initiate the proceeding.

A proceeding to quash is a civil action and is subject to the normal filing fee and to the provisions of Rule 4 of the Federal Rules of Civil procedure concerning service of the summons and complaint. These cases differ significantly, however, from cases in which the government is in a purely defensive posture in a civil action because the filing of the petition to quash under Section 7609 or Section 982 stays compliance with the summons or document request. Since it is not in the best interest of the government to delay resolution of the proceeding by insisting that the service of process rules be followed in all technical respects, absent compelling reasons to the contrary, the Tax Division will generally waive a technical insufficiency of service of process in cases otherwise properly brought on the authority of Section 7609 or Section 982.

In view of the importance of Section 7609 summonses to the investigative efforts of the IRS generally and in light of our expectation that the new procedures will raise numerous issues of first impression, Section 7609 and Section 982 petitions to quash will be handled by Tax

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Division attorneys during the initial stages of litigation until the courts become familiar with the new procedures and precedents are established. Upon receipt of a petition to quash, your office should contact the appropriate Civil Trial Section or the Office of Special Litigation by telephone to notify us of the case. For the reasons noted above, these procedures should be followed even when it appears that service on the United States might be defective. The persons to be contacted are:

Northern--Gerald C. Miller	FTS 724-6490
Southern--Herbert L. Moody, Jr.	FTS 724-6409
Western--James H. Jeffries, III	FTS 724-6543
Central--S. Martin Teel, Jr.	FTS 724-6430
Special Litigation--Claire Fallon	FTS 272-6572

Unless otherwise instructed by the Tax Division, the petition should then be forwarded to us by express mail.

6-3.251 Procedures

Whenever an action is filed to quash or enjoin an Internal Revenue summons or foreign document request, U.S. Attorney should notify the Tax Division immediately and furnish copies of the pleadings. Except where the suit is filed in accordance with the Section 7609 or Section 982 procedures, the attorney assigned to the proceeding will move immediately to dismiss on the authority of Reisman v. Caplin, supra, if the suit is brought in a state court and the United States or an Internal Revenue official is named, the U.S. Attorney should remove the action to the federal court immediately and thereafter the attorney assigned to the proceeding will move to dismiss on the authority of Reisman v. Caplin, supra. If such a suit is filed in any court and neither the United States nor any Internal Revenue official is named, the U.S. Attorney should not become involved in any manner in the action.

Whenever an action is filed to enjoin the Internal Revenue Service or a summoned witness, or to quash a summons or the document request, the Internal Revenue Service official who issued the summons or document request should be advised immediately so that a determination can be made whether judicially to enforce the summons or in a Section 7609 or Section 982 case to moot a defective summons or document request. If the Internal Revenue Service decides to seek enforcement of a summons, its recommendation should be processed promptly through regular channels so as to insure an early determination on the enforcement of the summons.

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6-3.260 Training and Litigation Support Relating to Summons Cases

A 63-minute color videotape training film on the preparation and trial of a summons case is available on loan from the Tax Division. A mock case file built on the training film scenario and containing model pleadings and briefs has been distributed to each U.S. Attorney's office, and copies are available from the Tax Division upon request.

JURIS contains a computerized research file of all summons and summons-related cases (located in the "WORKPRDT" group under the name "SUMENF") which is updated periodically and which provides instant computer-access to all summons cases by court, year, parties, citation or any of 112 separate summons enforcement issues, or any combination of these factors.

Each U.S. Attorney's office has also previously been furnished a copy of the Tax Division's Summons Enforcement Decisions List containing a printout of all reported summons cases with case histories and parallel citations. Finally, summons enforcement lectures and seminars by experienced Tax Division trial attorneys are available on request.

Any inquiries or requests concerning training and litigation support should be directed to James H. Jeffries, III at FTS 724-6543.

6-3.300 SUITS AGAINST THE UNITED STATES OR ITS OFFICERS AND EMPLOYEES

6-3.310 General

The general rule is that upon being served with a summons and complaint in a suit involving the Internal Revenue laws, a copy of the summons and complaint should be forwarded to the appropriate Civil Trial Section or the Office of Special Litigation of the Tax Division and to the local District Counsel, Internal Revenue Service. In actions under 28 U.S.C. §2410 to quiet title, foreclose, partition or condemn property on which the United States has a mortgage or other lien, the general rule does not apply and the procedures in USAM 6-3.222 should be followed. Special additional rules for tax refund suits are set out at USAM 6-3.630, 6-3.631 and 6-3.632, infra. See also, USAM 6-3.521, infra, for rules relating to bankruptcy cases.

In suits under Section 7429 for review of jeopardy assessments, the appropriate Civil Trial Section should immediately be notified by telephone of the commencement of the case in light of the expedited hearing of these matters. See USAM 6-3.370, infra. Notification by telephone is also essential if a hearing is set on a temporary restraining order or an early hearing is set on a preliminary injunction.

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6-3.320 Actions under 28 U.S.C. §2410

6-3.321 Nature of the Suit

Under 28 U.S.C. §2410 the United States has consented to be sued in any suit instituted in a federal or state court having jurisdiction of the subject matter in which the plaintiff seeks: (1) to quiet title to; (2) to foreclose a mortgage or other lien upon; (3) to partition; (4) to condemn; or (5) of interpleader or in the nature of interpleader with respect to, real or personal property on which the United States has or claims a mortgage or other lien. By this statute, the United States has waived its sovereign immunity suit, subject to certain specified conditions. United States v. Brosnan, 36 U.S. 237, 244-246 (1960). These conditions must be strictly complied with as a jurisdictional prerequisite for maintenance of the suit. See United States v. Felt & Tarrant Co., 283 U.S. 269, 273 (1931); Rock Island & Co. R.R. v. United States, 254 U.S. 141, 143 (1920). The District Director of Internal Revenue is not a proper party-defendant in any suit under this statute because he/she has no proprietary interest in the tax lien. Czieslik v. Burnet, 57 F.2d 715 (E.D. N.Y) (1932). If he/she is named, steps should be taken to have him/her dismissed. Similarly, if the suit is against the United States, but is not permitted suit under 28 U.S.C. §2410, the United States should be dismissed for lack of jurisdiction. United States v. Sherwood, 312 U.S. 584 (1941); United States v. Shaw, 309 U.S. 495 (1940); Minnesota v. United States, 305 U.S. 382 (1939).

The manner of service upon the United States is provided for in the statute and must be strictly complied with. Service is made by serving the process of the court, together with the complaint, on the U.S. Attorney and sending copies of the process and complaint by either registered or certified mail to the Attorney General.

Any pleading (whether or not designated as a complaint) which attempts join the United States as a party in the types of actions named, where the action involves liens arising under the Internal Revenue Service Code, must set forth with particularity the nature of the interest or lien of the United States, i.e., (1) the name and address of the delinquent taxpayer, and (2) if a notice of tax lien has been filed, (a) the identity of the Internal Revenue Service office which filed the notice, and (b) the date and place such notice of lien was filed. 28 U.S.C. §2410(b). Further, in an action to foreclose a mortgage or other lien, the plaintiff must seek judicial sale. 28 U.S.C. §2410(c).

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A judgment or decree in an action under 28 U.S.C. §2410 shall have the same effect respecting the discharge of property from the mortgage or other lien held by the United States as may be provided with respect to such matters by the local law of the place where the court is situated. If for any reason a judicial sale is not held in a lien or mortgage foreclosure action and the United States does not consent to the lack of judicial sale, the junior federal tax lien or mortgage will not be divested from the property involved. Where a judicial sale is held and the tax lien of the United States is discharged, the United States may redeem the sold realty within 120 days from the date of sale, or within such longer period as may be allowed under local law. A revolving fund has been authorized for such purpose. The amount which the United States must pay in the exercise of its right of redemption, whether it relates to a sale under Section 2410(c) or a sale in foreclosure other than the plenary judicial proceedings (Section 7425(d)(1)), is set forth in a formula contained in Section 2410(d). If you deem that redemption is advisable, please contact the chief of the appropriate Civil Trial Section.

Where the United States asks, by way of affirmative relief, for foreclosure of its own lien, and property is sold to satisfy a first lien held by the United States, the United States may bid at the sale such sum, not exceeding the amount of its claim with expenses of sale, as may be directed by the Internal Revenue Service. See USAM 6-2.126, supra.

6-3.322 Procedures

Quiet title, foreclosure, partition and condemnation actions are processed in the same manner. It is not necessary to forward the summons and complaint to the local District Counsel or the Tax Division, but the Tax Division should be notified by memorandum or letter of the filing of the suit and the date of service. No further action should be taken until receipt of acknowledgement from the Tax Division that service has been made on the Attorney General and the jurisdictional requirements of the statute have been met. Upon receipt of the form referral letter from the Tax Division, the U.S. Attorney should then request the IRS Special Procedures Function to provide the information necessary to prepare an answer. A copy of the government's answer should be forwarded to the Tax Division. It is unnecessary for the U.S. Attorney to correspond further with the Tax Division with regard to these cases unless an offer in compromise is submitted or an appellate issue arises. Any questions should be directed to the Tax Division's Lien Unit at FTS 724-7465.

If an offer in compromise is made, promptly submit the matter to the Tax Division, appropriate Civil Trial Section, with your recommendation and sufficient data in support thereof. A copy of any compromise offer together with a copy of the complaint, should at the same time be forwarded to the

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local District Counsel of the Internal Revenue Service. This procedure is not applicable to those applications for release of the government's right to redemption with respect to which authority has been delegated to U.S. Attorneys' offices. See USAM 6-4.140 and 6-4.800, infra.

If an appeal is taken by another party to the proceeding, the U.S. Attorney should promptly advise this Division and inform us of the time limitation involved. If a decision is rendered adverse to the government on an issue contested by your office, please submit your recommendation with sufficient data to evaluate the question of appeal.

Please note that Code Section 6323 will govern the determination of the priority of the federal tax lien in these cases. The appropriate Civil Trial Section should be contacted should any interpretative problems arise concerning the priority to be accorded to the tax lien.

In all other respects, the case becomes the responsibility of the U.S. Attorney who should notify the Internal Revenue Service Special Procedures Function when the case is closed.

Interpleader actions, as well as those in the nature of interpleader, will be handled by the Tax Division. The necessary pleadings will be prepared by a section attorney and forwarded to the U.S. Attorney together with a letter of instruction.

In any other type of action allegedly brought under Section 2410 in which the United States or the District Director is named a party, the U.S. Attorney should advise the District Counsel as well as the Tax Division when the U.S. Attorney is served. In several instances, taxpayers against whom federal tax liens have been filed have instituted actions to quiet title their property and to have such liens removed as a cloud on title, thereby attempting to contest the merits of the tax assessments made against them which were secured by the liens. Jurisdiction of such suits is usually allowed under 28 U.S.C. §2410 and 28 U.S.C. §1340, granting jurisdiction to district courts in internal revenue matters. It is the government's position that 28 U.S.C. §2410 is not a jurisdictional statute, but only a waiver of sovereign immunity to certain specified types of suit to which a court has independent subject matter jurisdiction; that 28 U.S.C. §1340 is only a general grant of subject matter jurisdiction to a federal district court which must be buttressed by some other statute specifically waiving the sovereign immunity of the United States in a particular type of action; and that the waiver of immunity found in 28 U.S.C. §2410 does not extend to a suit by the taxpayer to inquire into the merits of a tax assessment. See Falik v. United States, 343 F.2d 38 (2d Cir. 1965); Quinn v. Hook, 341 F.2d 920 (3d Cir. 1965); Broadwell v. United States, 343 F.2d 470 (4th Cir. 1965), affirming per curiam, 234 F.Supp. 17 (E.D. N.C. 1964); Cooper

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Agency, Inc. v. McLeod, 348 F.2d 919, (4th Cir. 1965) affirming per curiam, 235 F.Supp. 276 (E.D. S.C. 1964); Floyd v. United States, 361 F.2d 312 (4th Cir. 1966).

6-3.323 Removal of Actions from State Courts

Most cases under 28 U.S.C. §2410 are filed in the state courts. The United States as a general rule, does not seek to remove such cases to the federal courts unless there is a real dispute respecting the rights of the United States and a substantial amount or important principle is involved. Where it appears to be desirable to remove the action to a federal court and circumstances permit, the matter should be discussed with the Tax Division. Since the statutes provide only a very limited time (30 days) in which to take steps for removal, 28 U.S.C. §1446(b), as amended, the suit should be brought to the attention of the Tax Division at the earliest possible moment. The judgment of the U.S. Attorney is relied upon heavily in deciding the matter but removal should not be effected without prior approval of the Tax Division. The procedure for removal is set forth in detail in 28 U.S.C. §§1441-1450.

Where the United States is made a party defendant in a state court action or intervenes, such as in the case of a petition to sell real estate of a decedent, removal can be accomplished where it appears to be desirable, with the approval of the Tax Division. See Section 7424. However, if a motion to dismiss as to the United States or District Director is filed, and it is determined that the United States should intervene, there must be an independent basis for jurisdiction in the federal court because, once the dismissal is effected, unless there is an independent jurisdictional basis, the case is subject to remand to the state court. S. & E. Building Material Co. v. Joseph P. Day, Inc., 188 F. Supp. 742 (E.D. N.Y. 1960).

6-3.330 Injunction Actions

Section 7421(a) provides, generally, that no suit for the purpose of restraining the assessment of any tax shall be maintained in any court, whether or not such person is the person against whom such tax was assessed. The addition of the latter clause serves to prevent a person against whom an assessment has been made from seeking to escape the bar of the statute on the ground that the person does not owe the tax and hence stands in the shoes of a third party rather than a taxpayer. See Floyd v. United States,

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361 F.2d 312 (4th Cir. 1966). Also, this amendment precludes any injunctive relief to third persons unless a District Director has, in fact, levied upon the property and the federal district court determines that his/her rights in the property are superior to those of the United States and that enforcement of the levy or a sale of the property pursuant to the levy would irreparably injure the third person's rights in such property.

Otherwise, the general rule is that injunctive relief may be had only upon satisfaction of the twofold test laid down in Enochs v. Williams Packing Co., 370 U.S. 1 (1962).

Since injunction cases are often set for hearing on very short notice, the Department, in some instances, will consent to a status quo arrangement whereby the District Director will agree to take no collection activity for a specified period of time in order to afford the Internal Revenue Service an opportunity to conduct an investigation and prepare a defense letter. In some instances, however, it may be necessary to consent to a temporary restraining order to accomplish the same purpose. Rule 65(b), Fed. R. Civ. P. In either case prior authorization should be obtained from the chief, appropriate Civil Trial Section or Office of Special Litigation. Of course, any suit attempting to restrain the collection of taxes must be served upon the Attorney General. The U.S. Attorney's office, however, should immediately notify the appropriate Civil Trial Section or Office of Special Litigation when served with such a suit; if a temporary restraining order is set for hearing or an early hearing on a preliminary injunction is set, please telephone the office of the chief of the appropriate Civil Trial Section or Office of Special Litigation so that the necessary pleading can be prepared and forwarded to the U.S. Attorney.

6-3.340 Suits Under the Freedom of Information Act

Recent experience has shown that the Freedom of Information Act (FOIA) litigation against the Internal Revenue Service is being brought as an alternative to taxpayer discovery in district court refund cases, Tax Court cases, criminal tax cases, injunction and collection suits and other litigation handled by the Tax Division. Accordingly, it has been determined that FOIA suits against the Internal Revenue Service and against the Tax Division will be handled on a centralized basis by the Tax Division's Civil Trial Section, Central Region.

Since under 5 U.S.C. §552(a)(4)(C) an answer or other pleading to the complaint must be served within 30 days after the complaint is served upon the defendant, and since 5 U.S.C. §552(a)(4)(D) provides that FOIA suits are to take precedence on the docket over all other cases, it is imperative that

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the Civil Trial Section, Central Region, receive immediate notice of the filing such a suit. Specifically, the U.S. Attorney's office should immediately notify that section by telephone when served with the complaint in such a suit. The appropriate pleading will be prepared by the Tax Division and forwarded to the U.S. Attorney for filing. The same procedure should be followed in the case of lawsuits brought against the Tax Division under the FOIA.

In general, see USAM 1-5.000.

6-3.350 Suits Under the Privacy Act

The Privacy Act of 1974, 5 U.S.C. §552a, has great potential for creating further litigation against the Internal Revenue Service. Subsection (g)(1)-(5) of the Privacy Act creates injunction and tort type actions against the agency involved. Specifically, an individual has the right to seek an injunction ordering the production of any agency record allegedly improperly withheld from the individual, and, in addition, may seek an injunction ordering the agency to amend an individual's record in accordance with his/her request. Tort actions may also be brought for damages for the willful and intentional failure by an agency to maintain personally identifiable records accurately, relevantly and in a timely and complete fashion where an adverse determination has been made by an agency against the individual; the Act further provides for a tort suit for damages occasioned where an agency improperly releases information about an individual without consent.

Suits under the Privacy Act against the Internal Revenue Service will be handled by the Civil Trial Section, Central Region, and when the U.S. Attorney's office is served with the complaint in such a suit, immediate written notice thereof should be given to that section. The appropriate responsive pleading will be prepared by the Civil Trial Section, Central Region, and forwarded to the U.S. Attorney.

In general, see USAM 1-5.000.

6-3.360 Subpoenas Served on Employees of the Internal Revenue Service

Frequently, subpoenas are served upon revenue agents and other employees of the Internal Revenue Service, in cases not involving federal taxes, and in which the United States or District Directors are not parties, requiring them to appear in court to produce official documents and records or to testify with respect to matters which have come to their attention in their official capacity.

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Section 301.9000-1, Treasury Regulations on Procedure and Administration (1954 Code) provides that in such cases the Internal Revenue officer should appear in court and respectfully decline to produce the records or to give the testimony called for on the ground that he/she is prohibited therefrom by the Treasury Regulations. Instructions have been issued to the Service personnel regarding this matter to establish a uniform policy regarding procedure to be followed where subpoenas are served upon them. In most cases, if there is sufficient time, the Commissioner will issue specific instructions to the employee and request that these be exhibited to the U.S. Attorney.

The validity of the Treasury Regulations, *supra*, has been upheld and approved by the Supreme Court, *Boske v. Comingore*, 177 U.S. 459 (1900), cf. *Touhy v. Ragen*, 340 U.S. 462 (1951), involving a subpoena served upon an employee of the Department of Justice.

In the event the employee of the Internal Revenue Service is served with a subpoena and contacts the U.S. Attorney for the purpose of protecting the interests of the Service representative and those of the government, the U.S. Attorney should appear, if necessary, with the individual employee before the court out of which the subpoena was issued. The U.S. Attorney should also give notice of the subpoena matter to the Civil Trial Section, Central Region. If the necessity arises, the matters set out above should be submitted to the court. Frequently, this will not be necessary since experience has demonstrated that if this prohibition is explained to the attorney who is responsible for the issuance of the subpoena, the attorney will voluntarily release the Service employee from responding thereto without requiring the U.S. Attorney to seek the aid of the court.

6-3.370 Suits to Review Jeopardy and Termination Assessments Under Section 7429

Code Section 7429 provides for both administrative and judicial review of jeopardy and termination assessment actions taken under Sections 6851, 6861 or 6862.

When your office has been served with a copy of a summons and a complaint alleging a cause of action under Section 7429, the Chief, Special Procedures Branch in the District Director's Office of the Internal Revenue Service, should be immediately notified of the action so that steps can be taken to meet the stringent time requirements imposed therein. Notification

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must be given within one working day. This is necessary to ensure a prompt response since Section 7429 requires the District Court to make determination of the reasonableness of the assessment within 20 days after the action was commenced. The Tax Division will prepare the answer and defend the suit.

Because of the 20-day limitation within which the Court must ordinarily make its determination, it is necessary that we immediately be informed when a Section 7429 complaint is filed with the clerk of court or served on the U.S. Attorney. Each U.S. Attorney, therefore, is requested to telephone the chief of the appropriate Civil Trial Section or the Office of Special Litigation responsible for civil tax litigation in that jurisdiction upon learning that this type of action has been commenced so that the Tax Division may prepare an appropriate response as expeditiously as possible.

6-3.380 Suits Against Internal Revenue Service Officials in Their Personal Capacities

When Internal Revenue Service officials are sued in their personal capacities, for example in Bivens suits, these defendants are amenable to service of process by mail under Rule 4(c)(2)(C)(ii) of the Federal Rules of Civil Procedure. In such situations, the advice of the appropriate Regional Counsel will be sought concerning whether receipt should be acknowledged. If due to the shortness of time there would be no opportunity to seek the advice of Regional Counsel, the U.S. Attorney may be asked to review the receipt and acknowledgment form. Any returned acknowledgment form should contain a statement that all defenses under Rule 12(b) of the Federal Rules of Civil Procedure are specifically preserved.

6-3.400 SUITS INVOLVING GOVERNMENTAL IMMUNITY FROM STATE AND LOCAL TAXES

The Tax Division is charged with the responsibility of representing the interests of government agencies and officers in contesting the improper imposition of state or local taxes. Requests for assistance frequently come directly from government contractors and members of the Armed Forces, as well as from government agencies. Because of their sensitive nature and the need for their close coordination, all such matters are handled directly by the Tax Division. All requests, whether to institute litigation or merely for advice or to persuade taxing authorities not to impose a tax, should be promptly referred to the Civil Trial Section, Central Region.

6-3.500 CLAIMS OF UNITED STATES IN BANKRUPTCY, RECEIVERSHIP, PROBATE, AND INSOLVENCY PROCEEDINGS

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6-3.510 General

The field offices of the Internal Revenue Service file proofs of claim for unpaid taxes in bankruptcy proceedings, state court receivership and insolvency proceedings, and in probate proceedings. The Tax Division is ordinarily not notified of the filing of these claims and the U.S. Attorney may or may not be advised of the filing of a proof of claim. Where a controversy arises and the U.S. Attorney is requested to take any action or make a court appearance, the appropriate Civil Trial Section should be notified as soon as possible, by telephone if necessary, and prior to the filing of any pleading or the making of any court appearance, except in the direct referral bankruptcy cases. See USAM 6-3.522, infra.

If an objection to the proof of claim is filed, no action should be taken without prior consultation with the Tax Division. The necessity for prompt action will frequently require a telephone consultation with the appropriate Civil Trial Section.

Section 6036 places a duty upon every trustee in bankruptcy, receiver, assignee for the benefit of creditors, executor, and other like fiduciary to give notice of his/her qualification as such to the Secretary of the Treasury, or his/her delegate, in such manner and at such time as provided by the regulations. The purpose of this provision is to enable the Internal Revenue Service to make an immediate determination as to whether all taxes have been properly reported and paid.

6-3.520 Bankruptcy Proceedings

It is the practice in bankruptcy cases for the District Directors through the Special Procedures Function to file proofs of claim for taxes. The U.S. Attorney may be furnished with a copy of the proof of claim. In many cases this ends the matter so far as the U.S. Attorney is concerned because the claim will be allowed and paid by the trustee in bankruptcy as a matter of course from the bankrupt's estate to the extent that funds are available.

6-3.521 Contested Cases and Adversarial Proceedings

In contested cases and adversarial proceedings the pleading involving matters relating to the internal revenue laws should be promptly forwarded to the Tax Division, the District Counsel and the IRS Special Procedures Function.

6-3.522 Directly Referred Cases

The Internal Revenue Service will directly refer to the U.S. Attorneys bankruptcy matters involving:

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- A. Complaints or other pleadings to sell property;
- B. Cash collateral hearings;
- C. Motions to compel distribution and accounting;
- D. Motions to pay taxes or stop pyramiding of taxes;
- E. Motions for a more particularized disclosure statement;
- F. Chapter 13 cases involving \$10,000 or less where the proposed payments are insufficient or the period of payment is too long;
- G. Motions for relief from the automatic stay to permit commencement or continuation of proceedings before the United States Tax Court;
- H. Objection to confirmation of a plan;
- I. Motion by the United States to vacate or modify the automatic stay where all the other parties agree to the relief requested;
- J. Motion for order compelling production of records and/or filing of pre-petition tax returns;
- K. Motion for order compelling the filing of post-petition tax returns;
- L. Motion for order requiring segregation and/or deposit of post-petition trust fund taxes.

All other tax-related bankruptcy matters will be referred by the Internal Revenue Service to the Tax Division, including matters required to be reviewed by the National Office of the Internal Revenue Service, cases in which the debtors are prominent individuals or major corporations, and any matters not subject to the direct referral procedure.

6-3.523 Appeal to District Court

If the United States is aggrieved by an order of a bankruptcy court, it must within 10 days after the entry thereof, or within a possible extended period of up to 20 additional days, file with the bankruptcy court an appeal to the district court and serve copies on all adverse parties. Because of this short time limit, it is usually advisable for the U.S. Attorney to obtain an extension of time concurrently with advice of the matter to the Tax Division. The U.S. Attorney should promptly notify the appropriate Civil Trial Section by telephone and advise the District Counsel of adverse decisions, and take the necessary steps, including the filing of a notice of

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appeal to protect the government's interest. The decision on whether to appeal is made by the Tax Division. As to the time limit (60 days) and procedure for appeals from orders of the district court, see USAM 6-3.560, infra.

6-3.524 Reorganization Proceedings

The District Counsel of the Internal Revenue Service will directly file an acceptance or rejection of a plan of reorganization after notifying the U.S. Attorney. The Tax Division will be alerted by District Counsel if the debtor is a prominent individual or major corporation and will be consulted in the event the Tax Division is involved in litigation that would be affected by the plan.

6-3.530 Receivership Proceedings

Where receivers for the taxpayer are appointed in a state or federal court, it is the practice of the Internal Revenue Service to make determinations and file proofs of claim pursuant to the provisions of Section 6871(a). In such cases the receivership court has jurisdiction to hear and determine objections to the merits of the tax claim. The priorities of the United States in receivership proceedings are asserted under 31 U.S.C. §3713.

Whenever a contest develops as to the merits or priority of the claim, the U.S. Attorney should notify the Tax Division immediately and furnish all relevant pleadings and information. In such proceedings in state courts, the United States is generally required to abide by the procedural rules and time limits of the court.

6-3.540 Probate Proceedings

Where assessments have been made against the decedent in his/her lifetime, or are made thereafter, notice of the assessment in the form of a proof of claim is brought to the attention of the personal representative of the decedent. The U.S. Attorney may be furnished with a copy of the proof of claim. Generally, such a claim is allowed and paid in due course of administration and no further questions arise.

When a tax claim against a decedent's estate is disallowed in whole or in part, the District Director reports the fact to the District Counsel, Internal Revenue Service. In case further action to collect the claim is desired, the District Counsel will authorize and request the Attorney General to take such action. If the request is approved, the Tax Division will send appropriate instructions and pleadings to the U.S. Attorney to be filed and a discussion of the facts and the law involved.

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Occasionally it will be necessary for the U.S. Attorney to seek to control action of the personal representative through the processes of the probate court. Sometimes, if there is insolvency, the threatened action of the personal representative (as failure to recognize the government's priority) can be discouraged by calling his/her attention to the provisions of 31 U.S.C. §3713. In other cases, the supervisory authority of the probate court, provided by most state codes or statutes, will ordinarily be adequate.

Whenever a contest develops, or whenever it becomes necessary to compel the personal representative to act on a claim of the United States, the U.S. Attorney should notify the Tax Division and furnish any papers or information which may be germane to the question raised. Because of the differences in probate law in the several states, it is the general policy of the Department to rely heavily in probate court proceedings on the experience of the U.S. Attorney concerning the laws of that jurisdiction.

6-3.550 Insolvency Proceedings

There are various forms of insolvency proceedings in state courts, the most frequent of which is an assignment for the benefit of creditors. Where proofs of claim are filed in such proceedings and litigation arises, 31 U.S.C. §3713, relating to priorities, is applicable. Where a contest develops, the U.S. Attorneys should notify the Tax Division prior to taking any action and furnish all relevant pleadings and information.

6-3.560 Appeals in Bankruptcy, Receivership, Probate, and Insolvency Proceedings

The time limit on appeals to the circuit court of appeals from an order of the district court in bankruptcy cases is 60 days where the United States is involved in a suit. The U.S. Attorney must assume responsibility for filing a timely notice of appeal and taking all steps necessary to perfect the right to appeal in such cases and in other receivership, probate, and insolvency proceedings, pending authorization of appeal by the Solicitor General. If the adverse decision is rendered in a state court, the U.S. Attorney should advise the Tax Division each step to perfect an appeal is completed. For a further discussion on appeals, see Title 2, Appeals, supra.

6-3.600 SUITS FOR REFUNDS OF TAXES PAID

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6-3.610 General

The four Civil Trial Sections, the Claims Court Section and the Office of Special Litigation and Penalties of the Tax Division, USAM 6-3.010, 6-3.021 and 6-3.022, *supra*, are responsible for defending suits brought against the United States for refund of taxes alleged to have been improperly assessed and collected. (If such a suit is brought against a present or former officer or employee of the United States, the United States must be substituted as the true party in interest pursuant to 26 U.S.C. §7422(f).) The technical nature of the issues involved and the nationwide distribution of the suits which are filed require a close coordination between the appropriate Civil Trial Sections, the Internal Revenue Service and the U.S. Attorneys' offices. In those cases defended by a Civil Trial Section, the appropriate U.S. Attorney's office will receive information copies of the proceedings from that section.

6-3.620 Forums and Remedies Available to the Taxpayers

Taxpayers have three alternative forums to invoke for a judicial determination of the amount of taxes which they may owe. They may challenge the validity of a proposed tax assessment by filing a timely petition in the Tax Court (with respect to income, estate, gift, windfall profit and certain excise taxes), or they may pay the amount of assessed tax in dispute and, after filing administrative claims for refund, may file a suit for refund against the United States in a United States District Court or in the Claims Court.

6-3.630 Responsibilities of U.S. Attorney on Receipt of Complaint

The U.S. Attorney is responsible for sending a copy of all complaints filed against the United States or one of its present or former officers or employees in tax refund suits immediately to the Tax Division, the appropriate office of District Counsel of the Internal Revenue Service, the District Director of the Internal Revenue Service and the Internal Revenue Service Center. In tax refund suits involving the 100 percent penalty imposed by Code Section 6672, the complaint need not be forwarded to the Service Center and the copy forwarded to the District Director should be sent to the attention of the Special Procedures Function.

6-3.631 Copies to Tax Division

The memorandum accompanying the copies of the complaint sent to the Tax Division should state the date when the complaint was served and filed and should include any suggestions the U.S. Attorney may have concerning the case, the taxpayer, the court, state law, etc., which the U.S. Attorney believes would be helpful to the Tax Division in preparing the case for trial or exploring settlement possibilities.

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6-3.632 Copies and Call to Service Center

It is essential that the Internal Revenue Service Centers be given the earliest possible notice that a tax refund suit has been filed with the District Court. This is necessary because the Service must, in most cases, assemble its administrative files, forward them to Washington, and prepare an analysis of the government's litigating position within the 60 days provided for serving an answer under the Federal Rules of Civil Procedure.

A list of the Service Centers is provided below. No cover letter or memorandum need accompany the complaint sent to the Service Center, but it is essential that the envelope bear the notation REFUND LITIGATION CASE.

Contemporaneously with mailing a copy of the complaint to the Service Center, a telephone call should be made to the appropriate Service Center, informing the personnel there that a suit has been filed in the District Court and the following should be furnished:

- A. The name and address of the taxpayer-plaintiff;
- B. Type of tax by form number and the taxable period involved, e.g., Form 1040 for the calendar year 1970;
- C. Employer identification number or social security number, if available; and
- D. The Civil Action Number.

6-3.633 Service Centers

The Service Centers for the various states, their addresses, and their FTS telephone numbers are as follows:

Andover Service Center

Connecticut
Maine
Massachusetts
New York (except N.Y.C.)
Rhode Island
Vermont

Mailing Address

Internal Revenue Service Center
310 Lowell Street
Andover, Mass. 01810
Attn: Ref Lit/Stop 643
Telephone: FTS 840-9577 or 9583

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Atlanta Service Center

Alabama
Florida
Georgia
Mississippi
South Carolina

Mailing Address

Internal Revenue Service Center
P.O. Box 47421
Doraville, GA 30362
Attn: Barbara Lane/Stop 75B
Telephone: FTS 232-2229

Austin Service Center

Arkansas
Kansas
Louisiana
New Mexico
Oklahoma
Texas

Mailing Address

Internal Revenue Service Center
P.O. Box 934
Austin, Texas 78767
Attn: Ref. Lit/Stop 524
Telephone: FTS 760-8499 or 8490

Brookhaven Service Center

New Jersey
New York City
Long Island

Mailing Address

Internal Revenue Service Center
1040 Waverly Avenue
Holtsville, N.Y. 11799
Attn: Ref. Lit/Stop 523
Telephone: FTS 663-6249

Cincinnati Service Center

Michigan
Ohio

Mailing Address

Internal Revenue Service Center
P.O. Box 267
Covington, KY 41019
Attn: Ref. Lit/Stop 536
Telephone: 606-525-2446 (nonFTS)

Fresno Service Center

California
Hawaii

Mailing Address

Internal Revenue Center
P.O. Box 12866
Fresno, CA 93779
Attn: Ref. Lit/Stop 5344
Telephone: FTS 461-6257

Kansas City Service Center

Illinois
Iowa
Missouri
Wisconsin

Mailing Address

Internal Revenue Service Center
P.O. Box 5321
Kansas City, Mo. 64131
Attn: Ref. Lit/Stop 57
Telephone: FTS 926-5626

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Memphis Service Center

Indiana
Kentucky
North Carolina
Tennessee
Virginia
West Virginia

Mailing Address

Internal Revenue Service Center
P.O. Box 30309
Memphis, Tenn. 37501
Attn: Ref. Lit./Stop 70
Telephone: FTS 228-5104

Ogden Service Center

Alaska
Arizona
Colorado
Idaho
Minnesota
Montana
Nebraska
Nevada
North Dakota
Oregon
South Dakota
Utah
Washington
Wyoming

Mailing Address

Internal Revenue Service Center
P.O. Box 9953
Ogden, Utah 84409
Attn: Refund Lit. Coordinator/
Stop 6723
Telephone: FTS 586-7125

Philadelphia Service Center

Canal Zone
Delaware
District of Columbia
Guam
Maryland
Office of Int'l Operations
Pennsylvania
Puerto Rico
Samoa
Virgin Islands

Mailing Address

Internal Revenue Service Center
P.O. Box 245
Bensalem, PA 19020
Attn: Ref. Lit. DP 522
Telephone: FTS 481-2461

6-3.660 Role of the District Counsel of the Internal Revenue Service

Immediately after a new case is received in the Tax Division, a copy of the complaint is sent to the District Counsel of the Internal Revenue Service requesting that the Department be furnished with the Service's

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administrative files and a statement of the litigating position of the Service. After receiving this notice and request, the District Counsel's office requisitions and assembles all relevant Service files, analyzes these files for a determination and application of current Service policies, and sends these files to the Tax Division with a letter setting forth a summary of the jurisdictional and operative facts, a statement of relevant Service policies, and a recommendation concerning the factual or legal defenses which might be raised.

After a copy of the complaint is sent to District Counsel and receipt of the complaint has been acknowledged, the case is referred to the chief of the cognizant Civil Trial Section.

6-3.670 Preparation and Trial to Refund Suits

After examining the complaint to ascertain the nature of the issues involved and the geographical location, the chief of the appropriate Civil Trial Section or the Office of Special Litigation will normally assign the case to a trial attorney for preparation and trial. The trial attorney will forthwith request the court to enter his/her appearance as a government counsel of record for the trial and disposition of the case, and by copy of the request notify opposing counsel. Thereafter, the assigned trial counsel will be responsible for the handling of the case in the trial court, including all correspondence, motions, responses, briefs and trial of the case. For administrative and informational purposes the trial counsel shall keep the U.S. Attorney advised of the progress of the case by forwarding copies of correspondence and pleadings served on opposing counsel. See USAM 6-3.010, supra. When requested, the U.S. Attorney shall endeavor to provide material assistance in the trial of a case, particularly in jury cases. The U.S. Attorney shall immediately forward to the assigned trial attorney copies of all correspondence, motions, briefs, notices, etc., which may be received and served on the U.S. Attorney, unless the forwarding communication clearly indicates service on such trial counsel. See USAM 6-3.010, supra.

After issue is joined, discovery and other pre-trial preparation will be done by the trial attorney during trips to the field. Close cooperation of the U.S. Attorney's office and the trial attorneys before, during, and after these field trips is essential. Witnesses may have to be located and interviewed, facilities and a court reporter for depositions may be needed or occasional stenographic assistance may be needed.

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The primary responsibility for making all arrangements necessary for preparing refund cases for trial rests with the trial attorney but the attorney will obviously be unable to make these arrangements or prepare the case for trial without the close cooperation of the U.S. Attorney. The U.S. Attorney, on the other hand, has many pressing problems to resolve and should not have added to them burdensome or tardy requests for assistance.

If a refund suit is assigned for preparation and trial to the U.S. Attorney, the U.S. Attorney shall be responsible for the entire proceedings, including the filing of all pleadings and representations at all proceedings, and shall keep the Tax Division fully advised. The Division and the U.S. Attorney should confer with each other with respect to the position to be taken in such cases, and utilize such assistance as may be mutually agreeable between the Division and the U.S. Attorney. Notwithstanding the assignment of case responsibilities, the Division and the U.S. Attorney should cooperate in assisting each other by taking complementary steps to protect fully the interests of the United States and to assure the successful prosecution of the litigation.

6-3.671 Cooperation With the Internal Revenue Service

In preparing a case for trial, the attorney assigned the case continues a close liaison with the Internal Revenue Service. It is often necessary to request the Internal Revenue Service to conduct supplemental field investigation and valuation, engineering, or other necessary technical studies; make special actuarial, accounting, or tax computations; evaluate offers to settle pending cases; review current policy decisions and offers to settle pending cases; review current policy decisions and litigating policies of the Internal Revenue Service; and perform other activities which may be needed to prepare a case for trial.

6-3.672 Extensions

If, on occasion, the trial attorney requires an extension of time for the filing of a brief or other submission, it is the responsibility of the trial attorney to attempt to arrange such extension with the court. If problems of distance prevent the trial attorney from doing so, the trial attorney may request the assistance of the U.S. Attorney for that purpose, advising of the nature of the problem which has arisen and asking the U.S. Attorney to request the court for additional time.

6-3.673 Trial

The Civil Trial Sections and the Office of Special Litigation are normally responsible for the trial of refund suits.

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However, since the U.S. Attorney (or an Assistant U.S. Attorney) has an intimate knowledge of the community, the court, the opposing counsel, and the jury panels, material assistance may very often be given, particularly in jury cases.

Depending upon the assistance needed and the time required, the help of the U.S. Attorney or an Assistant U.S. Attorney may be requested. As with other problems and arrangements which may arise in tax refund suits, however, it is recognized that such assistance may be arranged (or declined) not as a general rule but only as needed in particular cases, and then only as the U.S. Attorney or the Assistant may have the time. The U.S. Attorney or an Assistant U.S. Attorney should, in jury cases whenever possible, assist in selection of the jury panel.

6-3.700 PROCEDURE UPON LOWER COURT RENDERING A DECISION

6-3.710 Favorable Decisions

6-3.711 Suspension of Case

When a case is decided in favor of the government, the case is held in suspense until (1) the time for appeal has expired without notice of appeal being filed, or (2) a notice of appeal has been filed. The U.S. Attorney has the responsibility of furnishing a copy of notice of appeal or cross-appeal filed by an adverse party. See USAM 2-3.220, supra.

6-3.712 Case Transfer to Appellate Section

If an appeal is noticed, the case is then transferred to the Appellate Section of the Tax Division. The case is returned to the Civil Trial Section or to the Office of Special Litigation after the appeal has been decided and becomes final. If the decision of the trial court in favor of the government is affirmed, the Tax Division file is closed and the IRS files are returned to District Counsel. If the decision of the trial court is modified or the case is remanded, the attorney who tried the case will make appropriate arrangements consistent with the court's order.

6-3.720 Adverse or Partially Adverse Decisions

When a judgment or order adverse to the United States is entered which requires the United States to make a tax refund or credit, pay attorney fees or costs or make some other payment, the U.S. Attorney should furnish to the

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Civil Trial Section or the Office of Special Litigation two certified copies of each such judgment or order so that payment may be made promptly if the Solicitor General decides that an appeal will not be prosecuted or if the United States is unsuccessful on appeal.

6-3.721 Actions to be Taken

The Civil Trial Section or Office of Special Litigation will furnish the District Counsel with a summary of the evidence presented at trial (or a copy of the transcript when when available), copies of all exhibits when practical, stipulations, pleadings, briefs, etc., and request the recommendation of the Service as to whether an appeal should be taken. If the case was tried by an Assistant U.S. Attorney, the pertinent documentary material and a recommendation concerning appeal should be forwarded to the Civil Trial Section or Office of Special Litigation.

The Civil Trial Section or Office of Special Litigation prepares its own recommendation on whether to appeal. The recommendations and files are then sent to the Appellate Section for further review and recommendation to the Solicitor General.

6-3.722 Filing of Notice of Appeal by the Government

Until the Solicitor General decides whether an appeal should be prosecuted, the U.S. Attorney is responsible for protecting the government's interest in the case by filing a timely notice of appeal and for obtaining any needed extensions for docketing the appeal. See USAM 2-2.130, supra.

6-3.723 When the Solicitor General Approves an Appeal

If the Solicitor General decides that an appeal will be authorized, the Civil Trial Section or Office of Special Litigation is responsible for taking such steps as may be necessary to perfect an appeal under the rules of the particular Court of Appeals, and may request the assistance of the U.S. Attorney.

6-3.724 When the Solicitor General Declines to Appeal

If the Solicitor General decides that an appeal will not be prosecuted, the Tax Division advises the U.S. Attorney immediately of this decision. The case is then transferred to the Post Litigation Unit of the Tax Division for processing and prompt payment of the judgment, as set forth in USAM 6-5.200, infra.

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6-3.725 Applications for Attorney Fees and Litigation Expenses

Attorneys' fees and litigation expenses may be awarded against the United States in tax cases on the authority of 28 U.S.C. §2412(b) and (d) for cases filed prior to March 1, 1983, and on the authority of Internal Revenue Code Section 7430 for cases filed on or after March 1, 1983.

When applications are filed for attorneys' fees and related expenses, copies should be forwarded to the appropriate Civil Trial Section and to District Counsel. The transmittal letter or memorandum to the Tax Division should indicate that a copy has been furnished to District Counsel.

The Tax Division has published a monograph concerning the award of attorneys' fees and related expenses under Section 7430, entitled "Guidelines--Awards Under Section 7430 of the Internal Revenue Code." Each U.S. Attorney has been furnished copies of these guidelines and additional copies are available upon request. The request should be directed to the chief of the appropriate Civil Trial Section.

6-3.800 MISCELLANEOUS PROBLEMS AND ARRANGEMENTS

6-3.810 Newspaper Reporters and Publicity

The U.S. Attorney is requested to furnish the Civil Trial Section or Office of Special Litigation with copies of all newspaper publicity and/or comments which, in the U.S. Attorney's judgment, may merit the Department's attention.

6-3.820 Pre-trial and Special Calendar Rules

In tax refund suits, the government is concerned with keeping to a minimum its potential liability for interest as well as with the heavy congestion which arises in court from any delays. Therefore, the Tax Division has found it to be extremely wise in refund suits to explore the possibilities of settlement, initiate stipulations where warranted, discourage continuances, to arrange special tax calendars, and especially to resort to pre-trial proceedings under Rule 16 of the Federal Rules of Civil Procedure. By these procedures, refund suits can be greatly expedited to the overall benefit of both government and taxpayers.

The U.S. Attorney should call any pre-trial calendar rules which are applicable to the handling of tax litigation to the attention of the Tax Division.

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6-3.830 Claims Court Cases

The U.S. Attorney may be requested to provide assistance on some aspects of a Claims Court case, such as locating and/or interviewing some local witnesses.

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6-4.000 COMPROMISES AND CONCESSIONS

6-4.100 AUTHORITY OF ATTORNEY GENERAL

6-4.110 To Compromise Cases

The Attorney General, by virtue of the authority vested in that office, has plenary power to compromise or settle any civil or criminal cases arising under the Internal Revenue laws after reference to the Department of Justice for prosecution or defense. Section 7122 is supplemental to, and declaratory of, that power, and it is discussed at length in 38 Op. A.G. 98 (1934). The following excerpt from the opinion summarizes the extent of the power by saying (at 102) that it is:

to be exercised with wise discretion and resorted to only to promote the Government's best interest or to prevent flagrant injustice, but that it is broad and plenary may be asserted with equal assurance, and it attaches, of course, immediately upon the receipt of a case in the Department of Justice, carrying with it both civil and criminal features, if both exist, and any other matter germane to the case which the Attorney General may find it necessary or proper to consider before he invokes the aid of the courts; nor does it end with the entry of judgment, but embraces execution.

6-4.120 To Make Concessions

The Attorney General "may dismiss a suit or abandon defense at any stage when in his sound professional discretion it is meet and proper to do so." 38 Op. A.G. 114, 126 (1934). This authority is wholly distinct from the power to compromise and should not be confused therewith. A compromise is based upon mutuality of consideration, whereas there is no mutuality of consideration when the Department simply dismisses or abandons defense of a suit. Such concessions in the past have sometimes been referred to, particularly in the context of refund suits, as administrative settlements.

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6-4.130 Redelegation of Authority to Compromise, Settle and Close Claims
(Tax Division Directive No. 47)

The authority to compromise, settle and close claims has been redelegated as follows, pursuant to Tax Division Directive No. 47:

Section 1. The Chiefs of the Civil Trial Sections, the Claims Court Section, and the Appellate Section and the Attorney-in-Charge of the Dallas Field Office are authorized to reject offers in compromise, regardless of amount, provided that such action is not opposed by the agency or agencies involved.

Section 2. Subject to the conditions and limitations set forth in Section 8 hereof, the Chiefs of the Civil Trial Sections and Claims Court Section are authorized to:

A. Accept offers in compromise in all civil cases in which the amount of the government's concession, exclusive of statutory interest, does not exceed \$200,000;

B. Approve administrative settlements not exceeding \$100,000;

C. Approve concessions (other than by compromise) of civil claims asserted by the government in all cases in which the gross amount of the original claim does not exceed \$100,000;

D. Accept offers in compromise in injunction or declaratory judgment suits against the United States in which the amount of the related liability, if any, does not exceed \$200,000; and

E. Accept offers in compromise in all other nonmonetary cases; provided that such action is not opposed by the agency or agencies involved, and provided further that the case is not subject to reference to the Joint Committee on Taxation.

Section 3. Subject to the conditions and limitations set forth in Section 8 hereof, the Chief of the Appellate Section is authorized to:

A. Accept offers in compromise with reference to litigating hazards of the issues on appeal in all civil cases in which the amount of the government's concession, exclusive of statutory interest, does not exceed \$200,000;

B. Accept offers in compromise in declaratory judgment suits against the United States in which the amount of the related liability, if any, does not exceed \$200,000; and

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C. Accept offers in compromise in all other nonmonetary cases which do not involve issues concerning collectibility, provided that such action is not opposed by the agency or agencies involved or the chief of the section in which the case originated, and provided further that the case is not subject to reference to the Joint Committee on Taxation.

Section 4. Subject to the conditions and limitations set forth in Section 8 hereof, the Attorney-in-Charge of the Dallas Field Office is authorized to accept offers in compromise in all civil cases in which the amount of the Government's concession, exclusive of statutory interest, does not exceed \$10,000; provided that such action is not opposed by the agency or agencies involved, and provided further that the case is not subject to reference to the Joint Committee on Taxation.

Section 5. Subject to the conditions and limitations set forth in Section 8 hereof, the Chief of the Office of Review shall have authority to:

A. Accept offers in compromise in all civil cases in which the amount of the government's concession, exclusive of statutory interest, does not exceed \$500,000;

B. Approve administrative settlements not exceeding \$500,000;

C. Approve concessions (other than by compromise) of civil claims asserted by the government in all cases in which the gross amount of the original claim does not exceed \$500,000;

D. Accept offers in compromise in all nonmonetary cases; and

E. Reject offers in compromise, or disapprove administrative settlements or concessions, regardless of amount; provided that the action is not opposed by the agency or agencies involved or the chief of the section to which the case is assigned, and provided further that the case is not subject to reference to the Joint Committee on Taxation.

Section 6. Subject to the conditions and limitations set forth in Section 8 hereof, the Deputy Assistant Attorneys General and the Special Counsel to the Assistant Attorney General each shall have authority to:

A. Accept offers in compromise of claims against the government in all cases in which the amount of the government's concession, exclusive of statutory interest, does not exceed \$750,000;

B. Approve administrative settlements not exceeding \$750,000;

C. Accept offers in compromise of claims in behalf of the government in all cases in which the difference between the gross amount of the

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original claim and the proposed settlement does not exceed \$750,000 or 10 percent of the original claim, whichever is greater;

D. Approve concessions (other than by compromise) of civil claims asserted by the government in all cases in which the gross amount of the original claim does not exceed \$750,000,

E. Accept offers in compromise in all nonmonetary cases; and

F. Reject offers in compromise, or disapprove administrative settlements or concessions, regardless of amount;

provided that such action is not opposed by the agency or agencies involved, and provided further that the case is not subject to reference to the Joint Committee on Taxation.

Section 7. Subject to the conditions and limitations set forth in Section 8 hereof, U.S. Attorneys are authorized to:

A. Reject offers in compromise of judgments in favor of the government regardless of amount;

B. Accept offers in compromise of judgments in favor of the government where the amount of the judgment does not exceed \$50,000; and

C. Terminate the collection activity by that office as to judgments in favor of the government which do not exceed \$50,000 if the U.S. Attorney concludes that the judgment is uncollectible; provided that such action has the concurrence in writing of the agency or agencies involved, and provided further that this authorization extends only to judgments which have been formally referred to the U.S. Attorney for collection.

Section 8. The authority redelegated herein shall be subject to the following conditions and limitations:

A. When, for any reason, the compromise or administrative settlement or concession of a particular claim, as a practical matter, will control or adversely influence the disposition of other claims totalling more than the respective amounts designated in Sections 2, 3, 4, 5, 6 and 7 the case shall be forwarded for review at the appropriate level.

B. When, because of the importance of a question of law or policy presented, the position taken by the agency or agencies or by the U.S. Attorney involved, or any other considerations, the person otherwise authorized herein to take final action (or the Chief of the Office of Review, in cases which have been considered by such office) is of the

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opinion that the proposed disposition should be reviewed at a higher level, the case shall be forwarded for such review.

C. If the Department has previously submitted a case to the Joint Committee on Taxation leaving one or more issues unresolved, any subsequent compromise or concession in that case must be submitted to the Joint Committee, whether or not the overpayment exceeds the amount specified in Section 6405 of the Internal Revenue Code.

D. Nothing in this Directive shall be construed as altering any provision of Subpart Y of Part O of Title 28 of the Code of Federal Regulations requiring the submission of certain cases to the Attorney General, the Deputy Attorney General, or the Solicitor General.

E. Authority to approve recommendations that the government confess error, or make administrative settlements, in cases on appeal, is excepted from the foregoing redelegations.

F. The Assistant Attorney General, at any time, may withdraw any authority delegated by this Directive as it relates to any particular case or category of cases, or to any part thereof.

Tax Division Directive No. 47 became effective on March 24, 1984.

6-4.140 Redelegation of Authority to Release Rights of Redemption in Certain Cases (Tax Division Directive No. 30)

The authority to release rights of redemption has been redelegated as follows, pursuant to Tax Division Directive No. 30:

The U.S. Attorney for each district in which is located real property, which is subject to a right of redemption of the United States in respect of Federal tax liens, arising under Section 2410(c) of Title 28 of the United States Code, or under state law when the United States has been joined as a party to a suit, is authorized to release the right of redemption, subject to the following limitations and conditions:

A. This redelegation of authority relates only to real property on which is located only one single family residence, and to all other real property having a fair market value not exceeding \$60,000. That limitation as to value or use shall not apply in those cases in which the release is requested by the Veterans Administration or any other federal agency.

B. The consideration paid for the release must be equal to the value of the right of redemption, or fifty dollars (50), whichever is greater.

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However, no consideration shall be required for releases issued to the Veterans Administration or any other federal agency.

C. The following described documents must be placed in the U.S. Attorney's file in each case in which a release is issued:

1. The favorable recommendation of the appropriate Regional Counsel of the Internal Revenue Service.

2. Appraisals by two disinterested and well-qualified persons. In those cases in which the applicant is a federal agency, the appraisal of that agency may be substituted for the two appraisals generally required.

3. Such other information and documents as the Tax Division may prescribe.

Tax Division Directive No. 30 became effective August 1, 1978. The functions of the Regional Counsel under the Directive are now performed by the appropriate District Counsel.

See USAM 6-4.800, infra, for a discussion of the release of the right of redemption arising in favor of the United States under 28 U.S.C. §2410.

6-4.200 NO COMPROMISE OF CIVIL LIABILITY WHEN CRIMINAL CASE PENDING

It is the view of the Department, sustained by decisions of the courts, that collection of the related civil liabilities, including fraud penalties, is a matter entirely separate and apart from the criminal aspects of a case. The latter, therefore, should receive priority in disposition. No consideration will be given to settlement of the civil liability until after sentence has been imposed in the criminal case, except where the court chooses to defer sentence in order to permit the defendant an opportunity to settle the civil liability.

6-4.300 TAX DIVISION APPROVAL REQUIRED

Except as authorized in Tax Division Directive No. 47, in USAM 6-4.130, supra, U.S. Attorneys should not enter into any agreement to compromise, or make any other administrative disposition of, any case under the cognizance of the Tax Division without the specific approval of the Division. See USAM 6-6.200, infra.

6-4.400 OFFERS IN COMPROMISE

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6-4.410 Form of Offer in Compromise

6-4.411 General Rule

As a general rule, the Department does not require any printed forms to be used in connection with offers in compromise of tax cases. Ordinarily it is sufficient if the offer is in writing, is signed by the taxpayer or his/her counsel of record, is definite and unambiguous, and sets forth clearly the proposed basis of compromise. A letter from the U.S. Attorney setting forth the terms of taxpayer's offer will not suffice. The offer should be specific with respect to interest to be paid or refunded.

6-4.412 Internal Revenue Service Form 656

There is no objection to the use of Internal Revenue Service Form 656 (Offer in Compromise) in submitting offers in compromise of claims against the taxpayer. As a matter of fact, it is a very helpful form, and its use is recommended.

6-4.413 Internal Revenue Service Form 433

In tax cases in which the offer is based upon inability to pay, a sworn statement of assets and liabilities on Internal Revenue Service Form 433, p.p. 14-21 infra, should accompany the offer. These forms are available at the local offices of the District Directors of Internal Revenue. Internal Revenue Service Forms 433-AB, 433-A, and 433-B and Justice Form OBD-500 should not be used.

6-4.420 Offers Submitted to the U.S. Attorney

Generally, upon receipt of an offer, the U.S. Attorney should forward it directly to the Tax Division, together with any appropriate comments and recommendations if it is a case in which he/she has taken an active part.

Normally, it is not necessary that amounts offered to the government accompany the offer when it is submitted. However, the offer should include a specific time when the amount due under the settlement will be paid. Generally, this should be 30 days from the date of the letter accepting the offer.

As to the U.S. Attorney's authority to accept or reject offers in compromise as to certain judgments and under certain conditions, see USAM 6-4.130, supra, and 6-6.300, infra.

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6-4.421 Payment of Amount Offered

Payment of amounts offered shall be by certified or cashier's check or money order, made payable to Internal Revenue Service. If a check or money order is submitted with the offer, the U.S. Attorney should hold the check or money order pending action on the offer. If the offer is accepted, the check or money order should be deposited through the direct deposit (lockbox) system pursuant to OBD order 2110 (Jan. 31, 1984) and the Tax Division and the Internal Revenue Service Center advised. If the offer is rejected, the check or money order should be returned to the offeror.

The Tax Division should be advised immediately in the event that any check is dishonored, or any payment is not made when due.

6-4.422 Time for Processing Offers

U.S. Attorneys should make a suitable allowance of time to permit action on offers in compromise. It is the Division's policy to obtain the recommendation of the District Counsel, Internal Revenue Service, on offers in compromise of tax cases, except in cases that District Counsel has classified as S.O.P. (Settlement Option Procedure). Moreover, additional computations and/or investigation by the Service might be necessary before the Department will be in a position to act on the offer. An investigation is almost always necessary when settlement is based on collectibility. For all of these reasons, U.S. Attorneys should urge the proponents and the courts to allow ample time for the orderly processing of offers. The amount of time required for this purpose will vary, depending upon the nature and complexity of each case, and the amount involved. For example, settlements involving a refund or credit in excess of \$200,000 of income, excess profits, estate or gift tax or certain excise taxes must be submitted to the Joint Committee on Taxation. A minimum of 45 days should be allowed even in a relatively uncomplicated matter, where no additional investigation or submission is required.

6-4.430 Offers Submitted to the Division

Frequently, compromise proposals are submitted directly to the Division. It is the Division's general practice to request the U.S. Attorney's recommendation on the offer when the U.S. Attorney has had an active part in the case, or if matters particularly within the U.S. Attorney's knowledge are involved.

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During compromise negotiations and the pendency of the offer, the Division will rely upon the trial attorney to secure any additional time for the next step in the court proceedings which may be necessary in order to protect the government's interest and to permit final action by the Division on the proposal.

6-4.440 Opportunity for Conference Regarding Offers

In the event the proponent and/or proponent's counsel desires to confer with the Tax Division, they should be advised that opportunity for an informal conference in Washington will be afforded upon timely request. The U.S. Attorney may be requested to participate in these conferences in appropriate cases.

6-4.450 Settlement Negotiations

In those cases where, after thorough study, the U.S. Attorney considers it appropriate to become involved in settlement negotiations, either alone or in conjunction with the trial attorney of the Tax Division, the U.S. Attorney should impress upon taxpayer's counsel (and also upon the court) that, except as set forth in Tax Division Directive No. 47, in USAM 6-4.130, supra, offers in compromise in tax cases are subject to final action by the Attorney General or certain officials of the Department in Washington to whom the Attorney General has specifically delegated such authority, and that the U.S. Attorney and the Tax Division trial attorney can do no more than make a recommendation.

6-4.500 COMPROMISES OF GOVERNMENT CLAIMS, INCLUDING COMPROMISES BASED ON INABILITY TO PAY

6-4.510 Statutory Interest

The amount of controversy includes statutory interest under Section 6601 of the Internal Revenue Code. Accordingly, interest should not be conceded as part of a settlement unless such concession is justified in light of the taxpayer's inability to pay or litigating hazards (pre-judgment) with respect to establishing the government's claim or the amount thereof. In any settlement based on collectibility where the government is receiving less than the total amount of its claims, plus interest, the offer should provide specifically that no part of the payment is deductible for federal income tax purposes.

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6-4.520 Collateral Agreements

Generally, when there is a possibility that the taxpayer may come into some money or property (e.g., through earnings, inheritance or gifts), the settlement should include the execution of a collateral agreement (Internal Revenue Service Form 2261 or 2261-A p.p. 22-25, infra) providing for the payment of increasing percentages of annual income (as defined in the agreement) over a period of years. The duration of the collateral agreement and the percentages of income should be fixed on the basis of the facts and circumstances of the case. Guidelines as to what the Service would normally require under a collateral agreement may be obtained from the appropriate District Counsel's office.

6-4.530 Waiver of Net Operating Losses, Etc.

If the taxpayer has any valuable tax attributes such as net operating losses, bad debt deductions, etc., and is proposing settlement based on collectibility, such tax attributes should be waived for purposes of settlement.

6-4.540 Security for Deferred or Installment Payments

Where the offer provides for deferred or installment payments, including payments pursuant to a collateral agreement, the taxpayer should agree to entry of judgment for the full amount of the government's claim. The settlement should further provide that the judgment will be marked satisfied when the taxpayer has completed his obligations under the settlement, (i.e., paying the amount due under the settlement including any amount due under a collateral agreement).

6-4.550 Tax Division Manual for Collection of Tax Judgments

The Tax Division Manual for Collection of Tax Judgments contains a Section (IV) on collectibility compromises which the U.S. Attorney may find useful, and which discusses these points in greater detail.

6-4.600 CONCESSIONS

As set forth in USAM 6-4.120, supra, the Department may abandon defense of a taxpayer's suit for refund. Generally, such concession (sometimes referred to as an "administrative settlement") occurs when the government

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has no defense to the taxpayer's claim or for various reasons determines not to defend. The result of the government's abandonment of the defense is that the taxpayer obtains a refund of the amount the taxpayer would have received had the taxpayer prevailed in the litigation. Similarly, the Department may dismiss a collection action or counterclaim in a refund suit where the defendant has a defense to the government's claim or for various reasons the government determines not to pursue the claim.

6-4.700 CLOSING OUT CASES COMPROMISED OR CONCEDED

6-4.710 Refund Suits

6-4.711 Compromises

After an offer in compromise of a refund suit has been accepted by the Department, the case will be terminated by dismissal of the suit pursuant to a stipulation for dismissal. Such stipulation shall be in the following form:

It is hereby stipulated and agreed that the above-entitled action be dismissed with prejudice, each party to bear its own costs, including any possible attorneys' fees or other expenses of this litigation.

In general, it is the policy of the Tax Division not to permit the terms of a compromise to be set forth in the stipulation. The U.S. Attorney should send the Tax Division a copy of the dismissal order so that the file may be closed. It is contrary to the policy of the Department to stipulate for judgment in favor of the taxpayer when a case has been compromised, and the U.S. Attorney should never do so without prior authority from the Tax Division.

6-4.712 Concessions

After a concession of a refund suit has been approved by the Department, the case will be terminated by permitting a judgment to be entered against the United States pursuant to a stipulation for entry of judgment. The stipulation will leave open the question of taxpayer's entitlement to any costs, fees, or other expenses pursuant to 28 U.S.C. §2412 or §7430 of the Internal Revenue Code. See USAM 6-4.720, infra.

6-4.713 Issuance of Refund Checks

After an offer has been accepted, or a concession has been approved, the Tax Division will authorize the Internal Revenue Service to issue a refund in the appropriate amount, plus statutory interest. At that time, the case will be transferred within the Tax Division to the Post Litigation Unit for supervision of the issuance of the refund check and/or notice of credit and the dismissal of the suit or entry of judgment. See USAM 6-5.000, *infra*. The Service usually requires about 60 days to effect the refund after the amount of the refund has been computed.

In cases handled by the U.S. Attorneys' offices, the refund check and/or notice of credit due under a compromise will be sent by the Tax Division to the U.S. Attorney for delivery to taxpayer's counsel only after the U.S. Attorney has received an executed stipulation of dismissal in the form set forth in USAM 6-4.711, *supra*; the refund check and/or notice of credit due under a concession will be sent by the Tax Division to the U.S. Attorney for delivery to taxpayer's counsel, together with a satisfaction of judgment.

6-4.720 Government Claims

6-4.721 Compromises

After the Department's acceptance of an offer in compromise of a case handled by the U.S. Attorney, where payment to the government is required within a relatively short period of time (e.g., 30 days of notification of acceptance), the U.S. Attorney will be authorized to execute a stipulation for dismissal of the case or the government's claim upon receipt of the total amount due. Such stipulation shall be in the following form:

It is hereby stipulated and agreed that the [complaint] [and] [counterclaim] [and] [third-party claim filed against _____] in the above-entitled case be dismissed with prejudice, each party to bear its respective costs, including any possible attorneys' fees or other expenses of this litigation.

In general, it is the policy of the Tax Division not to permit the terms of a compromise to be set forth in the stipulation. The U.S. Attorney should send the Tax Division a copy of the dismissal order so that the file may be closed.

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When payment to the government is due beyond 90 days of notification of acceptance, generally the settlement will provide for entry of judgment in the government's favor. See USAM 6-4.540, *supra*. The U.S. Attorney should send the Tax Division a copy of the judgment.

Payments due under a compromise should be made by cashier's or certified check payable to the "Internal Revenue Service." All such payments (other than those due under a collateral agreement (IRS Form 2261 or 2261-A)) should be made to the U.S. Attorney and upon the U.S. Attorney's receipt should be deposited through the direct deposit (lockbox) system pursuant to OBD Order 2110 (Jan. 31, 1984) with advice of receipt of payment made to the Tax Division and the Internal Revenue Service Center. The Tax Division should be advised immediately in the event of any default. Payments required under a collateral agreement should be sent by the taxpayer directly to the Service Center.

6-4.722 Concessions

After approval of a concession of a government claim in a case being handled by the U.S. Attorney, the U.S. Attorney will be authorized to stipulate to dismissal of the government's claim, without prejudice to the taxpayer's right to claim costs, fees, or other expenses under 28 U.S.C. §2412 or §7430 of the Internal Revenue Code.

6-4.800 RELEASE OF RIGHT OF REDEMPTION

Occasionally the Department is requested to release rights of redemption arising in favor of the United States under 28 U.S.C. §2410. As set forth in Tax Division Directive No. 30 (see USAM 6-4.140), the U.S. Attorney, with the concurrence of the Internal Revenue Service, may accept an application to release a right of redemption involving (1) real property on which is located only one single-family residence and (2) all other real property having a fair market value not exceeding \$60,000. The consideration paid for the release must be equal to the value of the right of redemption of \$50, whichever is greater. The limitations as to value or use of the property and consideration to be paid do not apply in those instances where the release is requested by the Veterans Administration or any other federal agency. Form OBD-225, p.p. 26-27, *infra*, is the prescribed form of application for release of right of redemption in respect of federal tax liens, copies of which can be requisitioned in the usual manner. Detailed information as to the procedure to be followed is set forth on the back of the application form.

In all instances not covered by the redelegation order, applications for release of rights of redemption should be handled in a manner similar to compromises.

Statement of Financial Condition and Other Information

(Please file in duplicate with offer in compromise)

Please furnish the information requested in this form with your offer in compromise, if the offer is based in whole or in part on inability to pay the liability. If you need help in preparing this statement, call on any Internal Revenue office. It is important that you answer all questions. If a question does not apply, please enter N/A. This will speed up consideration of your offer.

1a. Name(s) of Taxpayer(s)		b. Social Security Number	c. Employer Identification Number
d. Business Address		e. Bus. Tel. No.	2. Name and Address of Representative, if any
f. Home Address		g. Home Tel. No.	

3. Kind of tax involved	Taxable period	Amount due	Amount offered
a.			
b.			
c.			
d.			
e.			

4. Due and unpaid Federal taxes, (except those covered by this offer in compromise)		
Kind of tax	Taxable period	Amount due
a.		
b.		
c.		

5. Names of banks and other financial institutions you have done business with at any time during past 3 years--	
Name and address	Name and address
a.	b.
c.	d.

e. Do you rent a safety deposit box in your name or in any other name?
 No Yes (If yes, give name and address of bank)

6. If income withholding or employment tax is involved, please complete 6a through f

a. Were the employees' income withholding or employment taxes, due from employees on wages they received from employment, deducted or withheld from the wages paid during any period shown above? Yes No

b. If so, was the tax paid or deposited to the Internal Revenue Service? <input type="checkbox"/> No <input type="checkbox"/> Yes	c. If deducted but not paid or deposited to IRS, how did you dispose of the deducted amounts?
--	---

d. Has business in which you incurred such taxes been discontinued? <input type="checkbox"/> No <input type="checkbox"/> Yes	e. If so, on what date was it discontinued?
---	---

f. How did you dispose of assets of discontinued business?

7. Offer filed by individual

a. Name of Spouse		b. Age of Spouse	c. Age of Taxpayer
d. Names of dependent children or relatives	Relationship	Age	
(1)			
(2)			
(3)			
(4)			
(5)			
(6)			
(7)			

Please furnish your most recent financial information. In the columns below, show the cost and fair market value of each asset you own directly or indirectly. Also show all your interests in estates, trusts, and other property rights, including contingent interests and remainders.

8. Statement of assets and liabilities as of _____ (date)

a. Assets		Cost*	Fair market value
(1)	Cash	\$	
(2)	Cash surrender value of insurance (See item 9)		
(3)	Accounts receivable (See item 11)		
(4)	Notes receivable (See item 11)		
(5)	Merchandise inventory (See item 12)		
(6)	Real estate (See item 13)		
(7)	Furniture and fixtures (See item 14)		
(8)	Machinery and equipment (See item 14)		
(9)	Trucks and delivery equipment (See item 15)		
(10)	Automobiles (See item 15)		
(11)	Securities (See item 16)		
(12)			
(13)			
(14)			
(15)			
(16)			
(17)			
(18)			
(19)			
(20)			
(21)			
(22)			
(23)			
(24)			
(25)			
(26)			
(27)	Total assets	\$	\$
b. Liabilities		Amount	
(1)	Loans on insurance (See items 9 and 10)	\$	
(2)	Accounts payable		
(3)	Notes payable		
(4)	Mortgages (See item 13)		
(5)	Accrued real estate taxes (See item 13)		
(6)	Judgments (See item 17)		
(7)	Reserves (Itemize)		
(8)			
(9)			
(10)			
(11)			
(12)			
(13)			
(14)			
(15)			
(16)			
(17)			
(18)			
(19)			
(20)			
(21)			
(22)	Total liabilities	\$	

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*Less depreciation, if any)

9. Life insurance policies now in force with right to change beneficiary reserved

Number of Policy	Name of Company	Amount of Policy	Present Cash Surrender Value Plus Accumulated Dividends	Policy Loan	Date Made	Automatic Premium Payments*	Date Made
a.		\$	\$	\$		\$	
b.							
c.							
d.							
e.							
f.							
g.							
h.							
i.							
j.							

* Show only those made before date notice of levy was served on the insurance company.

10. Life insurance policies assigned or pledged on indebtedness
 If any of the policies listed in item 9 are assigned or pledged on indebtedness, except with insurance companies, give the following information about each policy:

Number of Policy Assigned or Pledged	Name and Address of Pledgee or Assignee	Amount of Indebtedness	Date Pledged or Assigned
a.		\$	
b.			
c.			
d.			
e.			
f.			
g.			

11. Accounts and notes receivable

Name	Book Value	Liquidation Value	Amount of Indebtedness if Pledged	Date Pledged
a. Accounts Receivable				
(1)	\$	\$	\$	
(2)				
(3)				
(4)				
(5)				
(6)				
(7)				
(8)				
(9)				
(10)				
(11)				
(12) Total	\$	\$	\$	
b. Notes Receivable				
(1)	\$	\$	\$	
(2)				
(3)				
(4)				
(5)				
(6)				
(7)				
(8)				
(9)				
(10)				
(11) Total	\$	\$	\$	

12. Merchandise inventory

Description	Cost	Fair Market Value	Liquidation Value	Amount of Indebtedness If Pledged	Date Pledged
a. Raw material	\$	\$	\$	\$	
b. Work in progress					
c. Finished goods					
d. Supplies					
e. Other (Specify)					
f. Total	\$	\$	\$	\$	

13. Real estate

Description	Cost*	Fair Market Value	Balance Due on Mortgage	Date Mortgage Recorded	Unpaid Interest and Taxes
a.	\$	\$	\$		\$
b.					
c.					
d.					
e.					
f.					
g.					
h.					
i. Total	\$	\$	\$		\$

14. Furniture and fixtures -- Machinery and equipment

Description	Cost*	Liquidation Value	Amount of Indebtedness If Pledged	Date Pledged
a. Furniture and fixtures (Business)	\$	\$	\$	
b. Furniture (Household-residence)				
c. Machinery (Specify kind)				
d.				
e.				
f.				
g. Equipment (Except trucks and automobiles) (Specify)				
h.				
i.				
j.				
k. Total	\$	\$	\$	

15. Trucks and automobiles

a. Trucks	\$	\$	\$	
b.				
c.				
d.				
e.				
f.				
g. Automobiles (Personal or used in business)				
h.				
i.				
j.				
k.				
l.				
m. Total	\$	\$	\$	

(*Less depreciation, if any)

16. Securities (Bonds, stocks, etc.)					
Name of company	Number of Units	Cost	Fair Market Value	Amount of Indebtedness If Pledged	Date Pledged
a.		\$	\$	\$	
b.					
c.					
d.					
e.					
f.					
g.					
h.					
i. Total		\$	\$	\$	

17. Judgments			
Name of Creditor	Amount of Judgment	Date Recorded	Where Recorded
a.	\$		
b.			
c.			
d.			
e. Total	\$		

18. Statement of income - Corporation

IMPORTANT: If the offer in compromise is from a corporation, please furnish the information requested below (from income tax returns, as adjusted, for past 2 years and from records for current year from January 1 to date).

a. Gross income	19	19	Jan. 1 to	19
(1) Gross sales or receipts (Subtract returns and allowances)	\$	\$	\$	
(2) Cost of goods sold				
(3) Gross profit - trading or manufacturing				
(4) Gross profit - from other sources				
(5) Interest income				
(6) Rents and royalties				
(7) Gains and losses (From Schedule D)				
(8) Dividends				
(9) Other (Specify)				
(10) Total income	\$	\$	\$	
b. Deductions				
(1) Compensation of officers	\$	\$	\$	
(2) Salaries and wages (Not deducted elsewhere)				
(3) Rents				
(4) Repairs				
(5) Bad Debts				
(6) Interest				
(7) Taxes				
(8) Losses				
(9) Dividends				
(10) Depreciation and depletion				
(11) Contributions				
(12) Advertising				
(13) Other (Specify)				
(14)				
(15) Total deductions	\$	\$	\$	
c. Net income (loss)	\$	\$	\$	
d. Nontaxable income	\$	\$	\$	
e. Unallowable deductions	\$	\$	\$	

19.

Salaries paid to principal officers and dividends distributed - Corporation

IMPORTANT: If the offer in compromise is from a corporation, please show salaries paid to principal officers for past 3 years and amounts distributed in dividends, if any, during and since the taxable years covered by this offer.

a. Salaries paid to (Name and Title)		19	19	19
(1)	. President	\$	\$	\$
(2)	. Vice President			
(3)	. Treasurer			
(4)	. Secretary			
(5)				
(6)				
(7) Total		\$	\$	\$

Year	Dividends Paid	Year	Dividends Paid	Year	Dividends Paid
(1)	\$	(8)	\$	(15)	\$
(2)		(9)		(16)	
(3)		(10)		(17)	
(4)		(11)		(18)	
(5)		(12)		(19)	
(6)		(13)			
(7)	\$	(14)	\$	(20) Total	\$

20. Statement of Income - Individual

IMPORTANT: If the offer in compromise is from an individual or an estate, please furnish information requested below (from income tax returns as adjusted for past 2 years).

a. Gross income		19	19
(1)	Salaries, wages, commissions	\$	\$
(2)	Dividends		
(3)	Interest		
(4)	Income from business or profession		
(5)	Partnership income		
(6)	Gains or losses (From Schedule D, Form 1040)		
(7)	Annuities and pensions		
(8)	Rents and royalties		
(9)	Income from estates and trusts		
(10)			
(11)			
(12)			
(13)			
(14)			
(15) Total income		\$	\$
b. Deductions			
(1)	Contributions	\$	\$
(2)	Interest paid		
(3)	Taxes paid		
(4)	Casualty losses (by fire, storm, etc.)		
(5)	Medical expenses		
(6)	Bad debts		
(7)			
(8)			
(9)			
(10)			
(11)			
(12) Total deductions		\$	\$
c. Net income (loss)		\$	\$
d. Nontaxable income		\$	\$
e. Unallowable deductions		\$	\$

22. Disposal of assets—From the beginning of the taxable period covered by this offer in compromise to the present date, have you disposed of any assets or property with a cost or fair market value of more than \$500, except for full value at the time of sale, transfer, exchange, gift or other disposition?

No Yes (If yes, please furnish the following information)

Description of Asset	Date of Transfer	Fair Market Value When Transferred	Consideration Received	Relationship of Transferee to Taxpayer
		\$	\$	

23. Interest in or beneficiary of estate or trust — Have you any life interest or remainder interest, either vested or contingent in any trust or estate, or are you a beneficiary of any trust?

No Yes (If yes, please furnish a copy of the instrument creating the trust or estate — Also give the following information)

Name of Trust or Estate	Present Value of Assets	Value of Your Interest	Annual Income Received From This Source
	\$	\$	\$

24. Grantor, donor, trustee or fiduciary — Are you the grantor or donor of any trust, or the trustee or fiduciary for any trust?

No Yes (If yes, please furnish a copy of the instrument creating the trust. Also give present value of corpus of trust, and any other pertinent information.)

25. Any other assets or interests in assets — Have you any other assets or an interest in assets either actual or contingent, other than those listed here (i.e., Profit-sharing plan or pension plan)?

No Yes (If yes, please describe the assets)

26a. Are foreclosure proceedings pending on any real estate which you own or have an interest in? <input type="checkbox"/> No <input type="checkbox"/> Yes	b. If yes, please give location of real estate.	c. Was the government made a party to the suit? <input type="checkbox"/> No <input type="checkbox"/> Yes
---	---	---

27a. Are bankruptcy or receivership proceedings pending? <input type="checkbox"/> No <input type="checkbox"/> Yes	b. If a corporation, is it in process of liquidation? <input type="checkbox"/> No <input type="checkbox"/> Yes
--	---

28. Is the sum offered in compromise borrowed money? (If yes, please give name and address of lender and list collateral, if any, pledged to secure the loan.)

No Yes

29. What is the prospect of an increase in value of assets or in present income? (Please give general statement)

30. Affidavit

Under penalties of perjury, I declare that I have examined the information given in this statement and, to the best of my knowledge and belief, it is true, correct, and complete, and I further declare that I have no assets, owned either directly or indirectly, or income of any nature other than as shown in this statement.

a. Date of this statement	b. Signature
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Form 2261
Rev. April 1977

DEPARTMENT OF THE TREASURY - INTERNAL REVENUE SERVICE

Collateral Agreement
Future Income - Individual

Name and Address of Taxpayers	Social Security and Employer Identification Numbers
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To: Commissioner of Internal Revenue

The taxpayers identified above have submitted an offer dated _____ in the amount of \$ _____ to compromise unpaid _____ tax liability, plus statutory additions, for the taxable periods _____

The purpose of this collateral agreement (hereinafter referred to as this agreement) is to provide additional consideration for acceptance of the offer in compromise described above. It is understood and agreed:

- That in addition to the payment of the above amount of \$ _____, the taxpayers will pay out of annual income for the years _____ to _____, inclusive
 - Nothing on the first \$ _____ of annual income.
 - _____ percent of annual income more than \$ _____ and not more than \$ _____.
 - _____ percent of annual income more than \$ _____ and not more than \$ _____.
 - _____ percent of annual income more than \$ _____.
- That the term annual income, as used in this agreement, means adjusted gross income as defined in section 62 of the Internal Revenue Code (except losses from sales or exchange of property and the deduction allowed by Code section 1202 for long-term capital gains shall not be allowed), plus all nontaxable income and profits or gains from any source whatsoever (including the fair market value of gifts, bequests, devises, and inheritances), minus (a) the Federal income tax paid for the year for which annual income is being computed, and (b) any payment made under the terms of the offer in compromise (Form 656) for the year in which such payment is made. The annual income shall not be reduced by net operating losses incurred before or after the period covered by this agreement. However, a net operating loss for any year during such period may be deducted from annual income of the following year only. It is also agreed that annual income shall include all income and gains or profits of the taxpayers, regardless of whether these amounts are community income under State law.
- That in the event close corporations are directly or indirectly controlled or owned by the taxpayers during the existence of this agreement, the computation of annual income shall include their proportionate share of the total corporate annual income in excess of \$10,000. The term corporate annual income, as used in this agreement, means the taxable income of the corporation before net operating loss deduction and special deductions (except, in computing such income, the losses from sales or exchange of property shall not be allowed), plus all nontaxable income, minus (a) dividends paid, and (b) the Federal income tax paid for the year for which annual income is being computed. For this purpose, the corporate annual income shall not be reduced by any net operating loss incurred before or after the periods covered by this agreement, but a net operating loss for any year during such period may be deducted from the corporate annual income for the following year only.
- That the annual payments provided for in this agreement (including interest at the annual rate as established under section 6621(a) of the Internal Revenue Code (subject to adjustments as provided by Code section 6621(b)) on delinquent payments computed from the due date of such payment) shall be paid to the Internal Revenue Service, without notice, on or before the 15th day of the 4th month following the close of the calendar or fiscal year, such payments to be accompanied by a sworn statement and a copy of the taxpayers' Federal income tax return. The statement shall refer to this agreement and show the computation of annual income in accordance with Items 1, 2, and 3 of this agreement. If the annual income for any year covered by this agreement is insufficient to require a payment under its terms, the taxpayers shall still furnish the Internal Revenue Service a sworn statement of such income and a copy of their Federal income tax return. All books, records, and accounts shall be open at all reasonable times for inspection by the Internal Revenue Service to verify the annual income shown in the statement. Also, the taxpayers hereby expressly consent to the disclosure to each other of the amount of their respective annual income and of all books, records, and accounts necessary to the computation of their annual income for the purpose of administering this agreement. The payments (if any), the sworn statement, and a copy of the Federal income tax return shall be transmitted to:
Address:

5. That the aggregate amount paid under the terms of the offer in compromise and the additional amounts paid under the terms of this agreement shall not exceed an amount equivalent to the liability covered by the offer plus statutory additions that would have become due in the absence of the compromise.
6. That payments made under the terms of this agreement shall be applied first to tax and penalty, in that order, due for the earliest taxable period, then to tax and penalty, in that order, for each succeeding taxable period with no amount to be allocated to interest until the liabilities for taxes and penalties for all taxable periods sought to be compromised have been satisfied.
7. That upon notice to the taxpayers of the acceptance of the offer in compromise of the liability identified in this agreement, the taxpayers shall have no right, in the event of default in payment of any installment of principal or interest due under the terms of the offer and this agreement or in the event any other provision of this agreement is not carried out in accordance with its terms, to contest in court or otherwise the amount of the liability sought to be compromised; and that in the event of such default or noncompliance or in the event the taxpayers become the subject of any proceeding (except a proceeding under the Bankruptcy Act) whereby their affairs are placed under the control and jurisdiction of a court or other party, the United States, at the option of the Commissioner of Internal Revenue or a delegated official, may (a) proceed immediately by suit to collect the entire unpaid balance of the offer and this agreement, or (b) proceed immediately by suit to collect as liquidated damages an amount equal to the tax liability sought to be compromised, minus any payments already received under the terms of the offer and this agreement, with interest at the annual rate as established under section 6621(a) of the Internal Revenue Code (subject to adjustments as provided by Code section 6621(b)) from the date of default, or (c) disregard the amount of such offer and this agreement, apply all amounts previously paid thereunder against the amount of the liability sought to be compromised and, without further notice of any kind, assess and collect by levy or suit (the restrictions against assessment and collection being waived) the balance of such liability. In the event the taxpayers become the subject of any proceeding under the Bankruptcy Act, the offer in compromise and this agreement may be terminated. Upon such termination, the tax liability sought to be compromised, minus any payments already received under the terms of the offer and this agreement, shall become legally enforceable.
8. That the taxpayers waive the benefit of any statute of limitations applicable to the assessment and collection of the liability sought to be compromised and agree to the suspension of the running of the statutory period of limitations on assessment and collection for the period during which the offer in compromise and this agreement are pending, or the period during which any installment under the offer and this agreement remains unpaid, or any provision of this agreement is not carried out in accordance with its terms, and for 1 year thereafter.
9. That when all sums, including interest, due under the terms of the offer in compromise and this agreement, except those sums which may become due and payable under the provisions of item 1 of this agreement, have been paid in full, then and in that event only, all Federal tax liens at that time securing the tax liabilities which are the subject of the offer shall be immediately released. However, if, at the time consideration is being given to the release of the Federal tax liens, there are any sums due and payable under the terms of item 1, they must also be paid before the release of such liens.

This agreement shall be of no force or effect unless the offer in compromise is accepted.

Taxpayer's Signature	Date
Taxpayer's Signature	Date
I accept the waiver of statutory period of limitations for the Internal Revenue Service.	
Signature and Title	Date

Form 2281-A
(Rev. May 1975)**Collateral Agreement**
Future Income - Corporation

Name of Corporation

Employer Identification Number

To: Commissioner of Internal Revenue

The taxpayer identified above has submitted an offer dated _____ in the amount of \$ _____ to compromise unpaid _____ tax liability, plus statutory additions, for the taxable periods _____

The purpose of this collateral agreement (hereinafter referred to as this agreement) is to provide additional consideration for acceptance of the offer in compromise described above. It is understood and agreed:

1. That in addition to the payment of the aforesaid sum of \$ _____, the taxpayer will pay out of annual income for the years _____ to _____, inclusive
 - (a) Nothing on the first \$ _____ of annual income.
 - (b) _____ percent of annual income in excess of \$ _____ and not in excess of \$ _____.
 - (c) _____ percent of annual income in excess of \$ _____.
2. That the term annual income, as used in this agreement, means taxable income before net operating loss deduction and special deductions (except losses from sales or exchange of property shall not be allowed), plus all nontaxable income, minus (a) the Federal income tax paid for the year for which annual income is being computed, and (b) any payment made under the terms of the offer in compromise (Form 656) for the year in which such payment is made. The annual income shall not be reduced by net operating losses incurred before or after the period covered by this agreement. However, a net operating loss for any year during such period may be deducted from annual income for the following year only.
3. That net operating losses sustained for years ending before the calendar year in which this offer is accepted shall not be claimed as a net operating loss carryover in computing Federal income and profits taxes.
4. That the annual payments provided for in this agreement (including interest at the annual rate as established under section 6621(a) of the Internal Revenue Code (subject to adjustments as provided by Code section 6621(b)) on delinquent payments computed from the due date of such payment) shall be paid to the Internal Revenue Service on or before the 15th day of the 3rd month next following the close of the calendar or fiscal year, such payments to be accompanied by a sworn statement and a copy of the taxpayer's Federal income tax return. The statement shall refer to this agreement and show the computation of annual income in accordance with item 2 of this agreement. If the annual income for any year covered by this agreement is insufficient to require a payment under its terms, the taxpayer shall still furnish the Internal Revenue Service a sworn statement of such income and a copy of the Federal income tax return. All books, records, and accounts shall be open at all reasonable times for inspection to verify the annual income shown in the statement. The payments (if any), the sworn statement, and a copy of the Federal Income tax return shall be transmitted to:

Address: _____

5. That the aggregate amount paid under the terms of the offer in compromise and the additional amounts paid under the terms of this agreement shall not exceed an amount equivalent to the liability covered by the offer in compromise plus statutory additions that would become due in the absence of the compromise.
6. That payments made under the terms of this agreement shall be applied first to tax and penalty, in that order, due for the earliest taxable period, then to tax and penalty, in that order, for each succeeding taxable period with no amount to be allocated to interest until the liabilities for taxes and penalties for all taxable periods sought to be compromised have been satisfied.
7. That upon notice to the taxpayer of the acceptance of the offer in compromise of the liability identified in this agreement, the taxpayer shall have no right, in the event of default in payment of any installment of principal or interest due under the terms of the offer and this agreement or in the event any other provision of this agreement is not carried out in accordance with its terms, to contest in court or otherwise the amount of the liability sought to be compromised; and that in the event of such default or noncompliance, or in the event the taxpayer becomes the subject of any proceeding under the Bankruptcy Act or of any proceeding whereby the affairs of the taxpayer are placed under the control and jurisdiction of a court or other party, the United States, at the option of the Commissioner of Internal Revenue or a delegated official may (a) proceed immediately by suit to collect the entire unpaid balance of the offer and this agreement, or (b) proceed immediately by suit to collect as liquidated damages an amount equal to the tax liability sought to be compromised, minus any payments already received under the terms of the offer and this agreement, with interest at the annual rate as established under section 6621(a) of the Internal Revenue Code (subject to adjustments as provided by Code section 6621(b)) from the date of default, or (c) disregard the amount of such offer and this agreement, and apply all amounts previously paid thereunder against the amount of the liability sought to be compromised and, without further notice of any kind, assess and collect by levy or suit (the restrictions against assessment and collection being waived) the balance of such liability.
8. That the taxpayer waives the benefit of any statute of limitations applicable to the assessment and collection of the liability sought to be compromised, and agrees to the suspension of the running of the statutory period of limitations on assessment and collection for the period during which the offer in compromise and this agreement are pending or the period during which any installment under the offer and this agreement remains unpaid or any provision of this agreement is not carried out in accordance with its terms and for 1 year thereafter.

This agreement shall be of no force or effect unless the offer in compromise is accepted.

Name of Corporation	Signature and Title of Officer	Date
I accept the waiver of statutory period of limitations for the Internal Revenue Service		
Signature and Title		Date

(See instructions on reverse)

Title of Case (Give exact and complete data)			
_____ hereby makes application for the release of the described property from the right of redemption of the United States arising under Title 28, United States Code, Section 2410 (c), or under applicable state law where the United States is joined as a party, and represents as follows:			
1. PROPERTY DATA			
Address		Description	
Type		Use	
2. APPRAISAL ACTION			
Date	Name of Appraiser	Fair Market Value	Forced Sale Value
3. FORECLOSURE ACTION			
Date of Sale	Name and Address of Purchaser		Purchase Price
4. ENCUMBRANCES AND CHARGES TO BE CONSIDERED			
Date	Description	Amount	Date and Place of Filing
5. FEDERAL TAX LIENS			
Amount	Name and Address of Taxpayer		Date and Place Filing
6. OTHER PERTINENT INFORMATION			
7. STATEMENT OF APPLICANT			
<p>This application is accompanied by a cashier's check or certified check payable to "Internal Revenue Service", which is hereby offered for release of the right of redemption of the United States. Should this application be rejected, the return of such cashier's or certified check will be accepted without interest.</p> <p>I declare, under the penalties of perjury, that this application (including any accompanying schedules, exhibits, affidavits, and statements) has been examined by me and to the best of my knowledge and belief is true, correct and complete.</p>			
Name of applicant (Type or Print)		Amount of Check	Date
Address		Signature	

PART A - TO BE EXECUTED BY APPLICANT

1984 USAM (superseded)

PART B--FOR GOVERNMENT USE	Release Recommended <input type="checkbox"/> Yes <input type="checkbox"/> No		Reasons for recommending rejection, if any.		
	Date		Signature (District Director, Internal Revenue Service)		
	Release Recommended <input type="checkbox"/> Yes <input type="checkbox"/> No		Reasons for recommending rejection, if any.		
	Date		Signature (Regional Counsel, Internal Revenue Service)		
	Release Recommended <input type="checkbox"/> Yes <input type="checkbox"/> No		D. J. File Number	CMN	Signature of United States Attorney
	FOR USE OF OFFICIAL AUTHORIZED TO TAKE FINAL ACTION:				
Application is <input type="checkbox"/> Accepted <input type="checkbox"/> Rejected		Date	Signature of Appropriate Official		

Instructions Regarding Applications for Releases of Rights of Redemption

PART A--To be executed by applicant

The application on obverse side of this sheet is to be completed in applying for any release of right of redemption of United States in respect of federal tax liens arising under 28 U.S.C. Section 2410(c), or under state law when the United States is joined as a party. In making application for such release applicant must complete obverse side hereof and submit original and three (3) copies to the United States Attorney for the district in which property subject to right is located in accordance with the following instructions:

- Property Data**—State address and legal description of property as it appears in the foreclosure or quiet title complaint. Attach additional sheets if necessary. Indicate type and use of property. As to type, indicate whether it is commercial or residential; as to use, indicate whether it is personal residence, rental property, etc.
- Appraisal Action**—State fair market value and forced sale value as of current date as established by written appraisals of two (2) disinterested persons qualified to render appraisals. Written appraisals in triplicate must accompany application, together with brief statement setting forth each appraiser's qualifications. Veterans' Administration or any other Federal Agency may submit its own appraised value in lieu of two written appraisals.
- Foreclosure Information**—Give date of foreclosure sale, name and address of purchaser, and purchase price. Attach copy of decree of foreclosure or other judicial proceeding.
- Encumbrances and Charges to be Considered**—List all encumbrances and charges which applicant requests be taken into consideration in valuing the right of redemption, in order of priority, together with sufficient information to establish or identify such priority. Attach additional sheets if necessary in supplying the information requested.
- Federal Tax Liens**—List applicable notices of federal tax liens in chronological order, using additional sheets if necessary to supply the information requested.
- Other Pertinent Information**—List any other information which, in the opinion of the applicant, might have a bearing upon the determination to be made.
- This applicant must be accompanied by a cashier's or certified check payable to the "Internal Revenue Service" in an amount equal to the value of the right of redemption of the United States as best estimated by the applicant based on the information contained in this application, but in no event can the consideration offered for the release be less than \$50.00 (except in the case of applications by agencies of the United States Government). The remittance shall be retained by the United States Attorney, and should this application be rejected such cashier's or certified check will be returned without interest.

PART B--For Government Use

The United States Attorney will forward original and two copies of application together with one set of the appraisals to District Director of Internal Revenue for his verification and recommendation. The Internal Revenue Service will return the original application to the United States Attorney who must satisfy himself that amount offered is at least equal to the value of right of redemption of the United States. He may take into consideration his own experience and familiarity with this or similar property in the area. Also, he may take into consideration forced sale value when it bears a realistic relationship to fair market value. United States Attorney upon satisfying himself that acceptance of application is in best interest of the United States and with concurrence of Internal Revenue Service is authorized to accept any application to release right involving (1) real property on which is limited a single-family residence, (2) all other property having fair market value not in excess of \$40,000, and (3) any application of Veterans' Administration or any other Federal Agency. If the United States Attorney concludes that acceptance of any application is not in best interest of the United States, he is authorized to reject such application. When the United States Attorney takes final action, a completed copy of the application should be sent to the Tax Division, U.S. Department of Justice. When the United States Attorney is not authorized to take final action, the original application and all appraisals and schedules which he has should be sent to the Tax Division.

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6-5.000 POST LITIGATION UNIT

6-5.100 DUTIES OF POST LITIGATION UNIT

After a compromise or concession has been approved by the Department, or a final adverse judgment has been entered, where a refund or payment of costs or attorney fees is due to the taxpayer, the Post Litigation Unit of the Administrative Section is responsible for seeing that the refund check, notice of credit or other check is timely issued and that the case is closed at the appropriate time.

6-5.200 DELIVERY OF REFUND CHECKS

In cases handled by the U.S. Attorney, the Post Litigation Unit will forward the refund check and/or notice of credit, together with a notice of adjustment, Form 1331-B, to the U.S. Attorney for delivery to taxpayer's counsel of record. See USAM 6-4.713, *supra*. Checks for costs, fees and expenses payable from the judgment fund, 31 U.S.C. §1304, will be mailed by the General Accounting Office directly to taxpayer's counsel. If there is a disagreement as to the amount of any check, the U.S. Attorney should immediately advise the Tax Division. The U.S. Attorney may be instructed to tender a check to counsel of record unconditionally, so as to stop the running of interest. Acceptance of a refund check will not prejudice the taxpayer's right to claim any additional amount. Section 6611(b)(2) of the Internal Revenue Code.

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6-6.000 POST-JUDGMENT COLLECTION MATTERS

If the federal system of self-assessment taxation is to function properly, individuals must have confidence in the government's fair and consistent application of the internal revenue laws. This fairness and consistency extends to the actual collection of taxpayers' legally established monetary obligations to the United States.

Once a judgment is obtained, the sooner collection activity begins, the more likely it is that it may be collected in full. The greater the delay, the greater the likelihood that assets previously available for collection will be dissipated or disappear. Accordingly, every effort must be made to effect collection as quickly as may be feasible.

There are substantial differences between the collection of tax judgments and collection of other civil judgments, and these differences must be kept in mind. These differences are set forth in USAM 6.6.400, infra.

In view of the importance of the collection function, the Tax Division prepared a Manual for Collection of Tax Judgments, to serve as a guide for collection activity. One copy of the manual has been distributed to each U.S. Attorney's office.

6-6.100 RESPONSIBILITY OF THE TAX DIVISION

Money judgments are entered in favor of the United States either in suits originating as a collection matter or on counterclaims in refund suits. After entry of judgment, the Civil Trial Section has the initial responsibility to pursue collection of the judgment promptly and vigorously.

As set forth in the Tax Division Memorandum No. 84-25, for approximately a 6-month period after a judgment has been entered, the trial attorney will follow the collection steps outlined in the Manual for Collection of Tax Judgments. During this period of initial collection activity, the Tax Division will have the primary responsibility for collecting the judgment. The Tax Division, however, may request the assistance of the U.S. Attorney (e.g., to register (record, docket or index) the judgment).

After the initial collection activity has been completed or, if later, when all pending litigation in the case has been terminated, the Tax Division will close its file on the case and refer the judgment to the U.S. Attorney or to the Internal Revenue Service for further collection efforts. The judgment will be referred to the U.S. Attorney if there appears to be further collection potential. A judgment which appears to be uncollectible will be referred to the Internal Revenue Service. If, however, it should

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subsequently appear that litigation is necessary to effect collection of the judgment, the Tax Division may elect to conduct the litigation.

6-6.200 RESPONSIBILITY OF THE U.S. ATTORNEY

6-6.210 In General

Under Tax Division Directive No. 47, (superceding Tax Division Directive No. 45 which substantially increased the authority of the U.S. Attorney as to cases formally referred to that office, see 6-4.130, supra,) it is important to distinguish between two categories of cases:

- A. Cases formally referred to the U.S. Attorneys' offices; and
- B. Cases as to which the U.S. Attorneys' offices may have open files, and be furnishing assistance to the Tax Division, but which have not been formally referred to the U.S. Attorney.

A judgment is formally referred to the U.S. Attorney, within the meaning of Tax Division Directive No. 47, only when a letter dated subsequent to June 6, 1983, states that the case is being formally referred, or that the prior referral is being formally confirmed, in accordance with Tax Division Memorandum No. 83-30 (or Tax Division Memorandum No. 84-25).

After the Tax Division has formally referred a judgment to the U.S. Attorney, the U.S. Attorney will have the primary responsibility within the Department of Justice for further collection efforts. As noted in USAM 6-6.100, supra, however, if it develops that litigation is necessary to effect collection of the judgment, the Tax Division may elect to conduct the litigation.

The U.S. Attorney should take whatever steps are necessary to effect collection and to protect the government's interests. To assist the U.S. Attorney in the collection of the judgment, at the same time that the Tax Division refers the case to the U.S. Attorney, the Tax Division will request the Internal Revenue Service (Special Procedures Function of the District Director's office) to advise the U.S. Attorney directly of the existence of potential assets for collection by procedures in aid of execution and to send the U.S. Attorney annually a copy of their Investigation Report of Judgment Debtor (Form 3347), if one is prepared. The Tax Division will also request the Internal Revenue Service, if it deems appropriate, to request the U.S. Attorney to extend the judgment lien.

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The U.S. Attorney should advise the Tax Division if any problems arise as to which the Tax Division might be of assistance, including any possible differences of view that might arise between the U.S. Attorney's office and the Internal Revenue Service in connection with the handling of a case.

6-6.220 Execution and Supplementary Proceedings After Judgment

Rule 69(a), Federal Rules of Civil Procedure provides that process to enforce a judgment for the payment of money shall be a writ of execution, unless the court directs otherwise. The rule provides further that the procedure on execution and the procedure in aid of execution shall be in accordance with the practice and procedure of the state in which the district court is held, or forum state, absent a countervailing federal statute. The federal district court has no more nor less authority to aid a judgment creditor than is provided under the law of the forum state.

Rule 64, Federal Rules of Civil Procedure, provides further that the remedies for seizure of the property of the proposed debtor are available during the course of the action under much the same conditions as they exist after judgment has been entered. The remedies include "attachment, garnishment, replevin, sequestration, and other corresponding or equivalent remedies . . ." These remedies are precisely what are referred to in Rule 69(c) as the procedures in aid of execution.

The most important federal statutes dealing with execution and procedures in aid of execution are Chapter 127 of Title 28, dealing with execution and judicial sales, and Section 2413 of the same Title, dealing with executions in favor of the United States.

Rule 69(a) also provides that in aid of the judgment or execution, the judgment creditor may obtain discovery from any person, including the judgment debtor, in the manner provided by the Federal Rules of Civil Procedure or in the manner provided by the practice of the state in which the district court is held.

It is often desirable to incorporate Internal Revenue Service Form 433, Statement of Financial Condition and other Information (see USAM 6-4.413) into written interrogatories, and when answers have been obtained, to request their verification by the Internal Revenue Service. See USAM 6-6.450, infra.

6-6.300 COMPROMISE AUTHORITY OF U.S. ATTORNEYS

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As set forth in USAM 6-4.130, supra, the U.S. Attorneys are authorized to:

A. Reject offers in compromise of judgments in favor of the government, regardless of amount;

B. Accept offers in compromise of judgments in favor of the government where the amount of the judgment does not exceed \$50,000; and

C. Terminate collection activity by that office as to judgments in favor of the government which do not exceed \$50,000 if the U.S. Attorney concludes that the judgment is uncollectible, provided that such action has the concurrence in writing of the agency or agencies involved, and provided further that this authorization extends only to judgments which have been formally referred to the U.S. Attorney for collection. (See USAM 6-6.210, supra, as to what constitutes a formal reference.)

The U.S. Attorney is required to refer to the Tax Division any offer to compromise a judgment (1) as to which a difference of opinion exists between the U.S. Attorney and the Internal Revenue Service, or (2) where the judgment exceeds \$50,000.

6-6.400 DIFFERENCES BETWEEN TAX JUDGMENTS AND OTHER CIVIL JUDGMENTS

6-6.410 The Internal Revenue Service's Ability to Collect Administratively

A suit to reduce a tax assessment to judgment must be brought, or a counterclaim filed, prior to the expiration of the six-year period provided under Section 6502 of the Internal Revenue Code of 1954 (26 U.S.C.), or the extension of that period (by agreement or by operation of law). During this period the Internal Revenue Service has the power to seize property by levy and distraint. See Sections 6331-6344 of the Code. The period for administrative collection is neither curtailed nor extended by the entry of a judgment. The Service's ability to collect administratively is extremely important, especially in jurisdictions which either do not permit garnishment of wages, or else restrict the effect of garnishment to the amount due for one pay period so that successive garnishments must be filed if a creditor seeks recovery over a period of time. Only that property specified in Section 6334 of the Code is exempt from the Service's levy.

If the taxpayer does not promptly pay the judgment in full or enter into an arrangement to pay the judgment over a period of time, and the period for administrative collection has not expired, the Tax Division will

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direct the Internal Revenue Service to commence collection efforts. These collection efforts will continue until the collection period has expired, even though the Tax Division may have referred the case to the U.S. Attorney for further collection efforts.

6-6.420 Inapplicability of State Exemption Statutes as to Tax Judgments

Government claims generally are subject to the various exemptions from creditor's process enacted in each state. However, with respect to federal taxes, the only exemptions generally available (outside of bankruptcy) are those provided under Section 6334 of the Code. Moreover, while a debtor in a bankruptcy case may elect either the state exemptions or federal bankruptcy exemptions, such exemptions will not be applicable as against a tax lien, notice of which is properly filed. See 11 U.S.C. §522(c)(2).

6-6.430 Bankruptcy Provisions as to Priority and Dischargeability Which Differ from Provisions Applicable to Other Government Claims

Under Sections 507 and 523 of U.S.C. 11 priority is granted and no discharge may be given for, *inter alia*, withheld taxes, or taxes for which the debtor is liable as a responsible officer under Section 6672 of the Internal Revenue Code. Similar treatment is accorded as to taxes due within three years of the date of filing the petition, or assessed within 240 days prior thereto, and as to most income taxes not assessed on the date of filing the petition.

6-6.440 Post-judgment Interest Rate Under 28 U.S.C. §1961

The federal post-judgment interest statute, 28 U.S.C. §1961, was amended effective October 1, 1982. Section 1961 now provides for post-judgment interest at a federal rate, as distinguished from the state rate which previously applied, but contains a special rule for tax cases. Judgments, including tax judgments, entered prior to October 1, 1982, are not affected by the amendments to Section 1961.

In nontax cases, the post-judgment interest rate is fixed by reference to the T-bill rate, may change as often as every four weeks, and is compounded annually. The rate effective on the date of entry of a nontax judgment will remain the rate for that judgment until satisfied.

Section 1961(c)(1) provides with respect to tax cases that: "Interest shall be allowed in such cases at a rate established under section 6621 of the Internal Revenue Code of 1954." The Section 6621 rate may change as

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often as every six months. Contrary to the practice for nontax judgments, when the Section 6621 rate changes prior to satisfaction of a tax judgment, the interest rate applicable to the judgment will also change. Thus, post-judgment interest in tax cases is computed in exactly the same manner as pre-judgment interest. For that reason, it is no longer necessary to obtain an interest computation prior to the entry of judgment. The judgments should simply provide for the recovery of tax, penalties and interest assessed and for the recovery of interest from the assessment date (which should be specified in the judgment) to the date of payment in accordance with law.

The final difference between tax judgments and other civil money judgments in the federal courts concerns the compounding of interest. Instead of compounding the interest on an annual basis, interest in tax cases accruing after January 1, 1983, is compounded on a daily basis in accordance with Internal Revenue Code Section 6622.

In connection with satisfaction of a tax judgment, the best approach is to request a computation of interest owing on the judgment from the Internal Revenue Service. When interest on a judgment is allowable at the state rate under Section 1961, prior to its recent amendment, the request for a computation submitted to the Internal Revenue Service should specifically request that interest be computed at the state rate.

6-6.450 Availability of Internal Revenue Service Personnel to Perform Collection Investigations

The local office of the District Director of Internal Revenue has personnel (Special Procedures Function) trained in the collection of tax indebtedness and also has continuing access to financial data contained in subsequent tax returns of judgment debtors. To assist the U.S. Attorney in the collection of judgments, at the same time that the Tax Division refers a case to the U.S. Attorney, the Tax Division will request the Special Procedures Function to conduct investigations to determine if a source exists for satisfying the judgment and to advise the U.S. Attorney directly of the existence of potential assets, and to send the U.S. Attorney annually a copy of their Investigative Report of Judgment Debtor (Form 3347), if one is prepared. See USAM 6-6.210, supra.

The U.S. Attorney should request the Special Procedures Function to verify a financial statement submitted by a taxpayer in connection with an offer to compromise a judgment or in response to the U.S. Attorney's request for financial information.

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6-6.460 Availability of Tax Returns and Tax Return Information

Pursuant to Section 6103(h)(2)(A) of the Internal Revenue Code, tax returns and return information of tax judgment debtors may be disclosed to U.S. Attorneys for their use in the collection of tax judgments. Such returns and return information, however, are prohibited from disclosure in the collection of non-tax judgments in favor of the United States, and extreme care must be used to assure that this difference is observed.

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