

TITLE 6 TAX

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6-1.100 Department of Justice Policy and Responsibilities

The Assistant Attorney General for 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 all matters arising under the internal revenue laws. 28 C.F.R. § 0.70.

The Department of Justice, including the United States Attorneys, is responsible for conducting all federal tax litigation in the federal bankruptcy, district, and appellate courts and in state courts. The Department's responsibilities include:

- prosecuting criminal tax cases
- defending refund suits
- litigating adversary proceedings and contested matters in bankruptcy and other insolvency proceedings
- litigating contested claims in probate proceedings
- defending actions involving property upon which there are federal tax liens, including mortgage foreclosure suits, interpleaders, and actions to quiet title to, partition or condemn property
- litigating collection suits against delinquent taxpayers
- obtaining orders enforcing administrative summonses and defending actions to quash administrative summonses
- obtaining orders allowing entry into private property to effect a levy or seizure of property
- obtaining orders allowing the administrative seizure of a personal residence
- defending actions for damages brought under the Internal Revenue Code
- defending actions for damages against IRS employees

Only attorneys whom the Department of Justice employs or authorizes to represent the United States may handle federal tax litigation in courts other than the Tax Court. Attorneys from the Office of the Chief Counsel, Internal Revenue Service (IRS), represent the Commissioner of Internal Revenue in Tax Court litigation, and may be appointed as Special Assistant United States Attorneys (SAUSAs) to handle certain tax-related bankruptcy litigation.

The information that the IRS provides to the Department of Justice for the Department's use in representing the United States in federal tax litigation is confidential. The Department may use that information only in accordance with 26 U.S.C. § 6103. Its attorneys and support staff must safeguard the information to prevent unauthorized disclosure and use. See Tax Information Security Guidelines for Federal, State, and Local Agencies (IRS Pub. 1075 (Rev. 2-07)).

6-1.110 Criminal Tax Cases

The Tax Division oversees all federal criminal tax enforcement and handles the investigation and/or prosecution of certain criminal tax cases. For a map reflecting the geographical assignments of the Tax Division Criminal Enforcement Sections, *see* Tax Resource Manual 1. For contact information, including mailing addresses and telephone and fax numbers, *see* Tax Resource Manual 2.

With certain exceptions set forth in this chapter, only the Tax Division may authorize grand jury investigations of potential criminal tax violations and the designation of any individual or entity as a target of the investigations. Only after the Tax Division has authorized a grand jury investigation, may a United States Attorney issue subpoenas and undertake other investigative actions. In addition, only after the Tax Division has authorized the prosecution of individuals and entities for criminal tax violations, may a United States Attorney seek an indictment or file any tax charges. Criminal tax violations include not only federal criminal charges arising under the internal revenue laws but also related statutes contained in provisions other than Title 26, United States Code. *See* USAM 6-1.200.

Once the Tax Division authorizes a tax investigation or prosecution, a United States Attorney generally has responsibility for handling the case. Upon the request of the United States Attorney, and provided that the Tax Division has sufficient resources, the Tax Division may assist the United States Attorney in investigating and/or prosecuting a tax case. The Tax Division may assign one or more of its highly qualified trial attorneys to handle the grand jury investigation and/or trial responsibilities or to work as co-counsel with an Assistant United States Attorney in one or more cases or investigations. If needed, the Tax Division can assign a Division attorney to assume responsibility for the United States Attorney's criminal tax docket for a period of time. Tax Division attorneys can also assist with criminal tax policy and litigation matters, including foreign evidence-gathering problems. Contact the Chief of the appropriate Criminal Enforcement Section for assistance.

6-1.120 Civil Tax Cases

Tax Division Responsibility. Attorneys in the Tax Division's Civil Trial Sections have primary responsibility for most civil tax litigation in the federal district and bankruptcy courts, as well as in state trial courts; attorneys in the Tax Division's Appellate Section have primary responsibility for civil tax cases in federal and state appellate courts. A United States Attorney's responsibilities in civil tax and tax-related bankruptcy cases will vary, depending on the nature of the case, local practice, and other circumstances. For a map reflecting the geographical assignments of the Tax Division Civil Trial Sections, *see* Tax Resource Manual 3. For contact information, including mailing addresses and telephone and fax numbers for the Civil Trial Sections, Appellate Section, and Office of Review, *see* Tax Resource Manual 4.

Counsel of Record. Generally, even when a Tax Division attorney has primary responsibility for the litigation, the United States Attorney will be listed as an attorney on the case. Depending on local practice, and after consultation, an Assistant United States Attorney may be listed as counsel of record in a particular case.

Tax Division Referrals. On occasion, the Chief or Assistant Chief of a Civil Trial Section may determine that the United States Attorney, rather than a Tax Division trial attorney, should represent the Government. When the Tax Division Chief or Assistant Chief authorizes the United States Attorney to handle a civil tax case, a Tax Division trial attorney may also be assigned to the case.

Direct Referrals by the IRS. The IRS refers some types of civil tax and tax-related bankruptcy cases directly to the United States Attorneys. These include certain types of bankruptcy proceedings, actions under 28 U.S.C. § 2410 (other than interpleaders), and some summons litigation. If the United States Attorney is unable to staff a civil tax case for which the United States Attorney has litigation responsibilities because of personnel shortages or for other uncontrollable circumstances, the United States Attorney should request assistance from the Tax Division. If, in certain bankruptcy matters, the Tax Division is unable to provide the requested assistance, the Office of the Chief Counsel, IRS, may permit one of its attorneys to assist the United States Attorney. In that case, the United States Attorney then may authorize the IRS attorney to act as a Special Assistant United States Attorney (SAUSA) for a limited period of time and for purposes of handling the particular matter for which the Tax Division could not provide assistance. The Tax Division can assist the United States Attorney in preparing the paperwork necessary to obtain IRS permission and/or appoint the SAUSA.

Special Assistant United States Attorneys. The United States Attorney's district, the United States Attorney and the IRS Counsel may arrange to have one or more IRS Counsel attorneys appointed as Special Assistant United States Attorneys to handle bankruptcy matters that the IRS would ordinarily refer to the United States Attorney. The Tax Division can assist the United States Attorney in preparing the paperwork necessary to obtain IRS permission and/or appoint the SAUSA.

6-1.130 Tax Division Manuals

The Tax Division has prepared several manuals that the United States Attorney may find useful

- **Criminal Tax Manual (2001)**—a comprehensive procedural and substantive guide to the handling of criminal tax cases, with jury instructions and other forms. *See* <http://www.usdoj.gov/tax/readingroom/2001ctm/titlepg.htm>.
- **Judgment Collection Manual (2004)**—a procedural guide to collecting tax judgments. *See* <http://www.usdoj.gov/tax/readingroom/JCM2004/JCM2004.pdf>.
- **Settlement Reference Manual (1996)**—guidance and instructions for analyzing and processing settlements in civil tax matters, including tax-related bankruptcy cases. *See* <http://www.usdoj.gov/tax/readingroom/settlemn/title.htm>.
- **Summons Enforcement Manual (2006)**—guiding legal principles, procedures, and sample forms for use in summons enforcement actions and in defending actions to quash IRS summonses. *See* Tax Resource Manual 27.
- **Tax Resource Manual (2007)**—supplement to the USAM with contact information, background information, and materials referenced in the USAM

Should the above-listed manuals conflict with this Title of the USAM, this Title of USAM controls.

PRIOR APPROVALS

USAM SECTION	TYPE AND SCOPE OF APPROVAL	WHO MUST APPROVE	COMMENTS
6-4.120	Grand Jury investigations limited to tax violations. Exceptions, see section.	Chief, Criminal Enf. Section or higher official, Tax Division	28 C.F.R. § 0.70; IRC § 6103(h); Tax Directive No. 96 (12/31/91).
6-4.123	Expansion of a Title 26 grand jury investigations to include targets not authorized by the Tax Division.	See above	Written request and written approval required.
6-4.130	Any search warrant directed at the office, structure, or premises of a target or subject who is an accountant, a lawyer, a physician, a public official/political candidate, a member of the clergy, a news media representative, a labor union official, or an official of an organization exempt from tax under 26 U.S.C. § 501(c)(3), and any search warrant directed at the office, structure, or premises of a third party, i.e., a person who is not a target or subject of the investigation.	Tax Division	Written request and approval required.

6-4.200; .210; .211; .218; .242	Prosecutions of Title 26 cases resulting from grand jury investigations including those charging mail fraud counts, either independently or as predicate acts to a RICO charge: 1) when the only mailing charged is a tax return or other internal revenue form or document; or 2) when the mailing charged is a mailing used to promote or facilitate a scheme which is essentially only a tax fraud scheme.	See above	Written request and written approval required. See USAM 9-105.750.
6-4.245	The declination of tax prosecutions.	Assistant Attorney General, Tax Division	Written request and written approval required. See USAM 6-4.245, Subpart A.
6-4.245	Presenting the same Title 26 matter to another grand jury or the same grand jury after a no bill.	Assistant Attorney General, Tax Division	Written request and written approval required. See USAM 6-4.245, Subpart B.
6-4.246	Dismissal of indictments, informations, and complaints	Assistant Attorney General, Tax Division	Written Request and Written Approval Required.
6-4.310	Plea to a lesser charge than Tax Division's designated major count.	Chief, Criminal Enf. Sec. or higher official Tax Division	Written request and written approval required.
6-4.320; .330	Taking of a nolo contendere or Alford Plea in criminal tax prosecution.	Assistant Attorney General, Tax Division	Written request and written approval required. See USAM 9-16.010; 9-27.500.
6-5.110	Initiate a suit to collect taxes.	Chief, Civil Trial Sec., Tax Division	
6-5.130	Intervention in a civil action to assert a federal tax lien on property which is the subject of the action.	Chief, Civil Trial Sec., Tax Division	

6-5.200	Utilize the attachment procedure on enforcement applications.	Chief, Civil Trial Sec., Tax Division	
6-6.300; 6-6.600; 6-8.300	Agreements to compromise, sell property, stipulate for judgment in favor of the taxpayer, or make any other administrative disposition of any case under the cognizance of the Tax Division except to the extent to the extent authority has been delegated to the United States Attorney.	Tax Division	Written approval required.

**CRIMINAL TAX
CASE PROCEDURES**

- 6-4.010 Federal Criminal Tax Enforcement
- 6-4.011 Criminal Tax Manual and Other Tax Division Publications
- 6-4.110 IRS Administrative Investigations
- 6-4.120 Grand Jury Investigations—Generally
- 6-4.121 IRS Requests to Authorize Grand Jury Investigations
- 6-4.122 United States Attorney's Grand Jury Investigations and Prosecutions
- 6-4.123 Joint United States Attorney—IRS Request to Expand Tax Grand Jury Investigation
- 6-4.125 IRS Transmittal of United States Attorney's Recommendation, Special Agent's and Criminal Tax Counsel's Reports, and Exhibits from Grand Jury Investigation
- 6-4.126 Restriction on Disclosure of Grand Jury Matters to IRS for Civil Use
- 6-4.130 Search Warrants
- 6-4.200 Tax Division Jurisdiction and Procedures
- 6-4.210 Tax-Related Mail, Wire, or Bank Fraud, RICO, or Money Laundering Charges
- 6-4.211 Standards of Review
- 6-4.212 Categories of Matters Reviewed
- 6-4.213 Review of Direct Referrals
- 6-4.214 Conferences
- 6-4.217 On-Site Review
- 6-4.218 Tax Division Authorizations and Declinations
- 6-4.219 Assistance of Criminal Enforcement Section Personnel
- 6-4.240 United States Attorney's Responsibilities
- 6-4.242 Recommendation Following a Grand Jury Investigation
- 6-4.243 Review of Direct Referral Matters
- 6-4.244 Review of Non-complex Matters
- 6-4.245 Request to Decline Prosecution
- 6-4.246 Request to Dismiss Prosecution
- 6-4.247 United States Attorney's Protest of Declination
- 6-4.248 Status Reports
- 6-4.249 Return of Reports and Exhibits
- 6-4.270 Criminal Division Responsibility
- 6-4.310 Major Count Policy in Plea Agreements
- 6-4.320 Nolo Contendere Pleas
- 6-4.330 Alford Pleas

- 6-4.340 Sentencing
 - 6-4.350 Costs of Prosecution
 - 6-4.360 Compromise of Criminal Liability/Civil Settlement
 - 6-4.370 Restitution
 - 6-4.400 Parallel Proceedings
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6-4.010 Federal Criminal Tax Enforcement

The Government helps to preserve the integrity of this Nation's self-assessment tax system through vigorous and uniform criminal enforcement of the internal revenue laws. Criminal prosecutions punish tax law violators and deter other persons who would violate those laws. To achieve maximum deterrence, the Government must pursue broad, balanced, and uniform criminal tax enforcement. Uniformity in tax cases is necessary because tax enforcement potentially affects more individuals than any other area of criminal enforcement. Broad and balanced enforcement is essential to effectively deter persons of varying economic and vocational status, violators in different geographic areas, and different types of tax law violations.

To achieve uniform, broad, and balanced criminal tax enforcement, the Attorney General has authorized the Tax Division to oversee all federal criminal tax enforcement and to authorize or decline investigations and prosecutions in tax matters. *See* USAM 6-4.200. For a map reflecting the geographical assignments of the Tax Division Criminal Enforcement Sections, see Tax Resource Manual 1. For contact information, including mailing addresses and telephone and fax numbers, see Tax Resource Manual 2.

6-4.011 Criminal Tax Manual and Other Tax Division Publications

The Tax Division's Criminal Tax Manual (2001) contains comprehensive discussions of statutes, methods of proof, various specialized areas, and policies and procedures pertaining to criminal tax prosecutions. The Manual also contains indictment and information forms and jury instructions. All prosecutors involved in federal criminal tax cases should consult the Manual for guidance on handling criminal tax cases. The Criminal Tax Manual may be accessed in at <http://www.usdoj.gov/tax/readingroom/foia/tax.htm>. The Tax Division also compiles other resources useful in criminal tax prosecutions. Should those resources conflict with this Title of the USAM, this Title of the USAM controls.

6-4.110 IRS Administrative Investigations

The special agents of IRS Criminal Investigation conduct the administrative investigations into allegations of criminal violations arising under the internal revenue laws and related provisions of Title 18, U.S.C. (e.g., 18 U.S.C. §§ 286, 287, 371, 1341). *See* Tax Resource Manual 5 and 6.

After an administrative investigation is completed, the special agent must prepare a special agent's report (SAR), together with exhibits, in order to recommend that the Government prosecute the matter. The SAR contains a detailed account of the investigation and the special agent's recommendations, and is reviewed by both the special agent's supervisors and the Chief Counsel, Criminal Tax Division (CT). CT then prepares a Criminal Enforcement Memorandum (CEM) that discusses the nature of the crime(s) for which the agent recommends prosecution, the evidence relied upon to prove the crime(s), technical or legal issues, anticipated difficulties in prosecution, and the special agent's specific recommendation. Thereafter, if CI concludes that the Government should prosecute the matter, the CI Special Agent-in-Charge (SAC) refers the matter to the Tax Division or, in some cases, the United States Attorney. *See* USAM 6-4.243. When the IRS directly refers a matter to the United States Attorney, it simultaneously forwards a copy of the transmittal letter to the Tax Division.

During an administrative investigation of a criminal tax case, the IRS may refer the case directly and simultaneously to both the United States Attorney and the Tax Division for an expedited guilty plea, if only legal source income is involved (i.e., neither narcotics nor organized crime), and the taxpayer's counsel states

that the taxpayer wishes to enter such a guilty plea. The plea must be consistent with the Tax Division's major count policy. *See* Tax Resource Manual 7.

When the IRS refers a criminal matter to the Department of Justice, it may share returns or return information with the Department of Justice (*see* 26 U.S.C. § 6103(h)(2)). Once a criminal referral is made, the IRS, including CI, may not issue or commence an action to enforce an administrative summons with respect to the taxpayer for the same tax and the same taxable period. *See* 26 U.S.C. § 7602(d), Tax Resource Manual 8.

6-4.120 Grand Jury Investigations—Generally

Although a federal grand jury is empowered to investigate both tax and non-tax violations of federal criminal laws, the Tax Division must first approve and authorize the United States Attorney's use of a grand jury to investigate criminal tax violations (*see* 28 C.F.R. § 0.70). The Tax Division has delegated to the United States Attorneys, however, the authority to approve grand jury investigations of certain false and fictitious claims for tax refunds in violation of 18 U.S.C. § 286 and 18 U.S.C. § 287 (other than those investigations involving a professional tax return preparer). *See* Tax Division Directive No. 96 (December 31, 1991), Tax Resource Manual 9.

6-4.121 IRS Requests to Authorize Grand Jury Investigations

In addition to using administrative process to secure evidence in an investigation, CI also may request that the Tax Division authorize a grand jury investigation when CI either cannot complete its investigation or otherwise determines that it cannot feasibly gather evidence through the administrative process. The IRS's request to authorize a grand jury investigation constitutes a referral of the matter to the Department of Justice. Once a criminal referral is made, the IRS, including CI, may not issue or commence an action to enforce an administrative summons with respect to the taxpayer for the same tax and the same taxable period. *See* 26 U.S.C. § 7602(d).

6-4.122 United States Attorney's Grand Jury Investigations and Prosecutions

- A. Tax Division Referrals for Prosecution.** The Tax Division authorizes the United States Attorney to conduct grand jury investigations into matters arising under the internal revenue laws to the extent necessary to perfect those tax charges that the Tax Division refers for prosecution.
- B. Tax Division Referrals for Grand Jury Investigation.** The Tax Division authorizes the United States Attorney to conduct grand jury investigations into matters arising under the internal revenue laws to the extent necessary to 1) perfect the tax charges for which the Tax Division authorizes an investigation or 2) determine whether the Tax Division should authorize prosecution. *See* USAM 6-4.242.
- C. Expansion of Non-tax Grand Jury Investigation to Possible Federal Criminal Tax Violations.** The Assistant Attorney General, Tax Division, has delegated limited authority to the United States Attorney to expand non-tax investigations in order to inquire into possible federal criminal tax violations, designate targets (subjects), determine the scope of the expanded investigation, and terminate such proceedings. Before a United States Attorney may file an information or seek the return of an indictment on matters arising under the internal revenue laws in an expanded investigation, however, the Tax Division must first authorize the specific tax charges. *See* Tax Division Directive No. 86-59 (October 1, 1986), Tax Resource Manual 10.
- D. IRS Direct Referrals for Prosecution.** In limited categories of cases, the Tax Division authorizes the IRS to refer certain matters arising under the internal revenue laws directly to the United States Attorney for prosecution. *See* USAM 6-4.243. In turn, the Tax Division authorizes the United States Attorney to conduct grand jury investigations into these matters, to the extent necessary to perfect the charges that the IRS has directly referred.

6-4.123 Joint United States Attorney—IRS Request to Expand Tax Grand Jury Investigation

The United States Attorney may not, without Tax Division approval, expand grand jury investigations into matters arising under the internal revenue laws to include targets that the Tax Division did not previously authorize. The United States Attorney, together with the IRS, must submit a written request to obtain Tax Division approval. The request must establish the basis for the Tax Division to authorize expansion of the investigation. *See* USAM 6-4.211(B).

6-4.125 IRS Transmittal of United States Attorney's Recommendation, Special Agent's and Criminal Tax Counsel's Reports, and Exhibits from Grand Jury Investigation

When a grand jury investigation is complete and the United States Attorney concludes that the Government has gathered sufficient evidence to proceed with prosecution, the United States Attorney should request that the special agent assigned to the matter prepare a SAR. After the SAR is completed, the special agent should request that CT Counsel review the SAR and prepare a CEM. Then, the SAC must forward the SAR, with copies of the relevant exhibits, and the CEM to the Tax Division for review and authorization. At the same time, the United States Attorney or the SAC must forward to the Tax Division the United States Attorney's written recommendation regarding prosecution of a target(s) for tax violations. *See* USAM 6-4.200. Whenever possible, the Tax Division will complete its review of the prosecution recommendation within thirty (30) days of receiving the transmittal letter, reports, and exhibits. *See* USAM 6-4.242.

The IRS also must transmit a recommendation against prosecution resulting from a grand jury investigation to the Tax Division for evaluation. Alternatively, the IRS must advise the Tax Division that it has no recommendation. *See* IRM 9.5.14.12.2(3); *see also* USAM 6-4.242. The Tax Division will complete its evaluation of the matter and authorize declination or other actions within thirty (30) days of receiving the recommendation.

6-4.126 Restriction on Disclosure of Grand Jury Matters to IRS for Civil Use

Federal Rule of Criminal Procedure 6(e)(3)(C)(i) prohibits the United States Attorney from disclosing "matters occurring before the grand jury" to the IRS for use in civil tax audit or administrative collection proceedings. *See United States v. Baggot*, 463 U.S. 476 (1983). The court may grant the Government's motion for disclosure of grand jury matters for use in certain civil proceedings, if the United States Attorney satisfies the exception requirements set forth in Rule 6(e)(3)(C)(i)(I), which require the Government to show that it will make the disclosure "preliminarily to or in connection with a judicial proceeding...." and that it has a "particularized need" for the requested materials. *See United States v. John Doe, Inc. I*, 481 U.S. 102, 108 (1987). Information that is not deemed to be "matters occurring before the grand jury" may be disclosed consistent with the requirements of 26 U.S.C. section 6103. *See* Tax Resource Manual 11.

6-4.130 Search Warrants

The Assistant Attorney General, Tax Division, has delegated to the United States Attorney and other specified supervisory officials in United States Attorney's Office the authority to approve search warrants in many matters arising under the internal revenue laws, when a warrant is directed at an office, structure, or premises of a target or subject of an investigation. *See* Tax Division Directive No. 52 (January 2, 1986) and related documents in the Tax Resource Manual 12 and 13. The United States Attorney must, however, submit a written request and obtain the approval of the Tax Division for any search warrant where the target or subject is:

- an accountant
- a lawyer
- a physician

- a public official/political candidate
- a member of the clergy
- a news media representative
- a labor union official or
- an official of an organization exempt from tax under 26 U.S.C. § 501(c)(3)

The United States Attorney must also submit a written request and obtain the approval of the Tax Division for any search warrant directed at an office, structure, or premises of a third party, i.e., a person who is not a target or subject of the investigation.

6-4.200 Tax Division Jurisdiction and Procedures

The Assistant Attorney General, Tax Division, has responsibility for all criminal proceedings arising under the internal revenue laws, with the exception of proceedings that pertain to: misconduct of IRS personnel; taxes on liquor, narcotics, firearms, coin-operated gambling and amusement machines, and 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) (but not the "omnibus clause")); 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.

6-4.210 Tax-Related Mail, Wire, or Bank Fraud, RICO, or Money Laundering Charges

The Tax Division must approve any and all criminal charges that a United States Attorney intends to bring against a defendant in connection with conduct arising under the internal revenue laws, regardless of which criminal statute(s) the United States Attorney proposes to use in charging the defendant. *See* USAM 6-4.200; 28 C.F.R. § 0.70. Thus, a United States Attorney must obtain Tax Division approval before bringing mail, wire or bank fraud charges, either alone or as the predicate to RICO or money laundering charges, if the conduct arises under the internal revenue laws. Conduct arising under the internal revenue laws includes a defendant's submission of a document or information to the IRS. A United States Attorney also must obtain Tax Division approval to bring charges based on state tax violations if the case involves parallel federal tax violations. *See* Tax Division Directive No. 128 (October 29, 2004), Tax Resource Manual 14.

A. Mail, Wire or Bank Fraud Charges. The Tax Division may approve mail, wire or bank fraud charges in tax-related cases involving schemes to defraud the Government or other persons if there was a large fraud loss or a substantial pattern of conduct and there is a significant benefit to bringing the charges instead of or in addition to Title 26 violations. *See generally* USAM 9-43.100. Absent unusual circumstances, however, the Tax Division will not approve mail or wire fraud charges if a case involves only one person's tax liability or when all submissions to the IRS were truthful.

Examples of situations where, with Tax Division approval, a United States Attorney may appropriately use mail, wire or bank fraud charges in a tax case include:

- 1) when a target has filed multiple fraudulent returns seeking tax refunds, using fictitious names, or using the names of real taxpayers without their knowledge, appropriate charges may include mail fraud (18 U.S.C. § 1341) or wire fraud (18 U.S.C. § 1343);
- 2) when a target has promoted a fraudulent tax scheme, appropriate charges may include mail fraud (18 U.S.C. § 1341) or wire fraud (18 U.S.C. § 1343);
- 3) when a target has induced a financial institution to approve refund anticipation loans on the basis of the fraudulent information submitted to the IRS, appropriate charges may include bank fraud charges (18 U.S.C. § 1344).

The Government may derive significant benefits at different stages of the litigation by using mail, wire or bank fraud charges. First, at the charging stage, the charges may support the Government's effort to forfeit the proceeds of the fraud scheme or may enable the Government to describe the entire scheme in the indictment. Second, at trial, the charges may support the Government's presentation

of all relevant evidence of the scheme or permit flexibility in the Government's choice of witnesses. And third, at sentencing, the charges may support the Government's efforts to obtain full restitution. *See* USAM 9-27.320(B)(3) ("If the evidence is available, it is proper to consider the tactical advantages of bringing certain charges.").

- B. Racketeering and Money Laundering Charges Based on Tax Offenses.** The Tax Division will not authorize the use of mail, wire or bank fraud charges to convert routine tax prosecutions into RICO or money laundering cases, but will authorize prosecution of tax-related RICO and money laundering offenses when unusual circumstances warrant such a prosecution. A United States Attorney who wishes to bring a RICO charge (18 U.S.C. § 1962) in any criminal matter arising under the internal revenue laws, must first obtain the authorization of the Tax Division and the Criminal Division's Organized Crime and Racketeering Section. *See* USAM 9-110.101. This requirement also applies to RICO cases where the predicate act is a state tax violation and there is a parallel federal violation. A United States Attorney who wishes to bring a money laundering charge (18 U.S.C. § 1956) based on conduct arising under the internal revenue laws, must first obtain the authorization of the Tax Division and, if necessary, the Criminal Division's Asset Forfeiture and Money Laundering Section. *See* USAM 9-105.300.

6-4.211 Standards of Review

- A. Prosecution.** The Principles of Federal Prosecution set forth the standards that govern the Tax Division's review of a criminal tax matter to determine whether to authorize prosecution. Under these principles, before authorizing a prosecution, the Tax Division must conclude that the Government has: 1) sufficient evidence to support a prima facie case; and 2) a reasonable probability of conviction. *See* USAM 9-27.220. The Tax Division also considers factors such as uniformity, balanced and broad enforcement goals, and Department and IRS priorities and policies in criminal enforcement matters. *See generally* USAM 6-4.010.
- B. Grand Jury Investigation.** When it reviews a criminal tax matter to decide whether it should authorize a grand jury investigation, the Tax Division considers whether articulable facts support a reasonable belief that a target or subject is committing or has committed a tax crime.

6-4.212 Categories of Matters Reviewed

- A. IRS Referrals.** The Tax Division utilizes a complex/non-complex case designation procedure to expedite the review of administrative criminal tax matters that the IRS has referred while maintaining uniformity of prosecution standards.
- 1) **Complex Matters.** The Tax Division designates as "complex" referrals that have the following characteristics: a) the IRS utilized an indirect method of proof in developing the case; b) the facts or legal issues are complicated; or c) the case contains technical and/or sensitive issues or tax or policy issues. A docket attorney from one of the three regional Criminal Enforcement Sections reviews each complex referral and prepares a prosecution memorandum ("pros. memo") that analyzes the evidence, highlights procedural and/or substantive problems with the case, and makes recommendations for further action. At least one senior Criminal Enforcement Section attorney reviews each pros. memo. The Tax Division then decides to authorize or decline prosecution.
- 2) **Non-complex Matters.** Non-complex matters are referrals that are relatively straightforward and uncomplicated and that do not present technical tax or sensitive policy issues. Senior Criminal Enforcement Section attorneys review these referrals to ensure that they do not present issues that require in-depth review. The Tax Division transmits a non-complex matter to the appropriate United States Attorney within two weeks of receiving the referral from the IRS. In turn, the United States Attorney must consider the matter within 90 days. *See* USAM 6-4.244.
- B. United States Attorney Requests for Grand Jury Authorization.** When a United States Attorney requests that the Tax Division authorize a grand jury investigation into a matter arising under the internal revenue laws, Criminal Enforcement Section personnel review the request and then approve or deny it. *See* USAM 6-4.122 and 6-4.123.

6-4.213 Review of Direct Referrals

The Tax Division monitors all matters that the IRS refers directly to the United States Attorneys. *See* USAM 6-4.243. If the Tax Division determines that the IRS has improperly referred a matter to the United States Attorney, the Tax Division will inform the United States Attorney to forward the matter to the Tax Division for review.

6-4.214 Conferences

If time and circumstances permit, the Tax Division generally grants a taxpayer's written request for a conference with the Division in Washington, D.C. If the taxpayer makes the request for a conference after the Tax Division has forwarded the matter to the United States Attorney, the Tax Division will deny the request and suggest that the taxpayer ask the United States Attorney for a conference. The United States Attorney has discretion to grant or deny a taxpayer's request for a conference. On rare occasions, the Tax Division may ask a United States Attorney to hold a conference and submit a written recommendation about whether the Division should change its decision regarding prosecution.

During the conference, the Tax Division usually advises conferees of the proposed charges, the method of proof, and the income and tax computations that the IRS recommended. The Division also advises them that these may change. The taxpayer or the taxpayer's representative may present explanations or evidence for the Tax Division to consider in reaching a decision regarding prosecution. The conferees may not use the conference, however, as an opportunity to explore the Government's evidence.

The Government may use any statements made by the taxpayer at the conference not only to evaluate the matter, but also in any court proceeding, whether criminal or civil. *See* Fed. R. Evid. 801(d)(2). The Government does not, however, use in general court proceedings statements made at these conferences by attorneys for the taxpayer, i.e., vicarious admissions. The Government may also develop investigative leads from any information provided at the conference. The Tax Division permits plea negotiations during conferences in non-grand jury cases. A plea obtained in such a case must be consistent with the Tax Division's major court policy and the policies of the appropriate United States Attorney's Office. *See* Tax Division Directive No. 86-58 (May 14, 1986), Tax Resource Manual 15.

6-4.217 On-Site Review

The United States Attorney may request that the Tax Division perform an on-site review of a matter by personally submitting a written request that outlines the reasons for the review. The Division grants such a request only in exceptional circumstances. Criminal Enforcement Section personnel will perform the approved review.

6-4.218 Tax Division Authorizations and Declinations

The final authority for the prosecution or declination of all criminal matters arising under the internal revenue laws rests with the Assistant Attorney General, Tax Division. 28 C.F.R. § 0.70.

6-4.219 Assistance of Criminal Enforcement Section Personnel

The Tax Division will consider the following reasons in support of a United States Attorney's request for litigation assistance:

- 1) Recusal of the United States Attorney and his/her office; and
- 2) The United States Attorney's lack of sufficient resources, personnel or expertise.

The Tax Division generally expects the United States Attorney to handle non-complex matters that have been accepted for prosecution. *See* USAM 6-4.244.

6-4.240 United States Attorney's Responsibilities

The United States Attorney is normally responsible for the investigation and prosecution of criminal tax matters that the Tax Division has authorized.

6-4.242 Recommendation Following a Grand Jury Investigation

At the conclusion of a tax or joint tax and non-tax grand jury investigation, the United States Attorney should submit to the Tax Division a written analysis of the investigation, along with a recommendation regarding whether the Government should bring charges or decline prosecution. If the United States Attorney is recommending that the Government should bring non-tax charges as well, the analysis must explain how the non-tax charges relate to the tax charges. *See* USAM 6-4.125.

The United States Attorney must ensure that the Tax Division receives the material at least 60 days prior to the expiration of the statute of limitations.

6-4.243 Review of Direct Referral Matters

The Tax Division authorizes the IRS to refer directly to the United States Attorney for prosecution the following categories of matters:

- A. **Excise taxes.** This category includes all 26 U.S.C. and 18 U.S.C. offenses involving taxes imposed under Subtitles C, D, and E of the Internal Revenue Code (26 U.S.C.), except taxes imposed under Chapter 24 (withholding from wages), 32A parts I through III (motor and aviation fuels), and 38D (ozone-depleting chemicals).
- B. **Multiple filings of false and fictitious returns claiming refunds.** This category includes all 18 U.S.C. §§ 286 and 287 charges that arise when a taxpayer files, in a single tax year, two or more returns on which false refunds are claimed. This category does not include, and the IRS may not directly refer to the United States Attorney, cases involving return preparers who falsified returns to claim refunds or cases involving persons who submitted false or fictitious claims for refund to the IRS through the Electronic Filing (ELF) program. (18 U.S.C. §§ 286 and 287).
- C. **Trust fund matters.** This category involves alleged violations of the trust fund laws. (26 U.S.C. §§ 7215 and 7512).
- D. **"Ten percenter" matters.** This category includes wage-related cases in which the holder of a winning bet pays a nominee a percentage of winnings in exchange for the nominee's redemption of the winning bet. The IRS may directly refer such cases to the United States only if they involve an arrest that occurs at the time of the offense. (26 U.S.C. § 7206(2)).
- E. **IRS Form 8300 Returns.** This category involves cases in which a taxpayer who receives cash in a trade or business and is required under 26 U.S.C. § 6050I to file an IRS Form 8300, fails to file or files a false Form 8300. With some exceptions, the Tax Division authorizes direct referrals in such cases to prosecute violations under 26 U.S.C. §§ 7203 and 7206. *See* Tax Division Directive No. 87-61 (February 27, 1987), Tax Resource Manual 16.

The United States Attorney may initiate or decline prosecution of direct referral matters without first obtaining Tax Division approval, but in all other tax matters may initiate proceedings only after the Tax Division authorizes prosecution. Once a prosecution of *any* tax matter, including a direct referral matter, is initiated, however, the United States Attorney may not dismiss the indictment, information, or complaint unless and until the Tax Division authorizes dismissal. *See* USAM 6-4.246.

6-4.244 Review of Non-complex Matters

Within 90 days of receiving a designated non-complex matter, a United States Attorney must either initiate proceedings or request that the Tax Division decline the matter (*see* USAM 6-4.245) or handle it (*see* USAM 6-4.219).

6-4.245 Request to Decline Prosecution

- A. Request by United States Attorney.** A United States Attorney who concludes that the Government should not prosecute a particular tax matter must submit a written recommendation to the Tax Division for consideration. The Assistant Attorney General, Tax Division, will then evaluate the matter and determine whether the matter should be prosecuted or declined. If the Assistant Attorney General determines that the matter should be prosecuted, the United States Attorney will be requested to proceed. If the United States Attorney declines to proceed, Criminal Enforcement Section personnel from the Tax Division will handle the matter. The United States Attorney must send the recommendation to the Chief of the appropriate Criminal Tax Enforcement Section sufficiently in advance of the expiration of the statute of limitations or any other deadlines to give the Assistant Attorney General, Tax Division, sufficient time to consider the recommendation and to give Tax Division personnel sufficient time to prepare for prosecution.
- 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 United States Attorney must not present the same matter (i.e., same transaction or event and the same putative defendant) to another grand jury or present it again to the same grand jury without the prior approval of the Assistant Attorney General, Tax Division. Ordinarily, the Assistant Attorney General does not give that approval unless the Government finds additional or newly-discovered evidence or there would be a clear miscarriage of justice if the Government did not make a second attempt to obtain an indictment.

6-4.246 Request to Dismiss Prosecution

The United States Attorney may not dismiss an indictment, information, or complaint unless and until the Tax Division approves the dismissal. There are two exceptions to this rule: 1) the grand jury returns a superseding indictment; or 2) the defendant has died. In all other cases, an Assistant United States Attorney must submit to the Tax Division a written request for dismissal which outlines the reasons for the request and indicates that the United States Attorney concurs with the request.

6-4.247 United States Attorney's Protest of Declination

If a United States Attorney disagrees with the Tax Division's decision to decline prosecution of a matter arising out of a grand jury investigation, the United States Attorney may submit a written request for reconsideration explaining why prosecution is warranted.

6-4.248 Status Reports

After the Tax Division refers a criminal tax case to the United States Attorney, it is essential that the United States Attorney keep the Division apprised of all developments through periodic case status reports. See Tax Resource Manual 17. As the case progresses, the Tax Division requires the following information:

- 1) A copy of the indictment returned (or no billed), or the information filed that reflects the date of the return (or no bill) or filing;
- 2) The date of arraignment and kind of plea;
- 3) The date of trial;
- 4) The verdict and date verdict returned;
- 5) The date and terms of sentence;
- 6) The date of appeal and appellate decision; and
- 7) copy of any press release.

It is important for the United States Attorney to provide the Tax Division with timely and regular updates regarding developments in pending cases. The Tax Division's files must reflect the true case status so that,

upon completion of the criminal case, the Division can close the criminal case in a timely manner and return it to the IRS.

6-4.249 Return of Reports and Exhibits

After obtaining both a final judgment from the trial court and a final appellate decision, the United States Attorney should take the following actions:

- 1) Retain grand jury materials under secure conditions, in accordance with the requirements of Federal Rule of Criminal Procedure 6(e) for maintaining the secrecy of grand jury material;
- 2) Return all exhibits and other materials that the Government obtained from witnesses; and
- 3) Return to the SAC, by certified mail, return receipt requested, all non-grand jury reports, exhibits, and other materials that the IRS furnished for use in the investigation or trial.

6-4.270 Criminal Division Responsibility

The Criminal Division of the Department of Justice is responsible for prosecuting persons who have committed the following tax-related offenses:

- liquor tax
- narcotics
- stamp tax
- firearms
- wagering
- coin-operated gambling and amusement machines
- malfeasance offenses that IRS personnel have committed
- forcible rescue of seized property
- corrupt or forcible interference with an officer or employee acting under the internal revenue laws (but not omnibus clause)
- counterfeiting, mutilation, removal, or misuse of stamps

See 28 C.F.R. § 0.70.

6-4.310 Major Count Policy in Plea Agreements

Disposition of tax cases through pleas. The Government disposes of an overwhelming percentage of all criminal tax cases by entry of a plea of guilty. The Tax Division authorizes the United States Attorney to accept a plea of guilty to the major count(s) of the indictment or information, without first obtaining Tax Division approval. The United States Attorney also may seek a plea to more than the major count(s) if he or she thinks the Government should accept such a plea. In most cases, the Tax Division identifies the major count(s) that have been authorized for prosecution in the Tax Division's prosecution memorandum or in its case transmittal letter.

Major Count Designations. When it designates the major count, the Tax Division primarily considers the following:

- 1) Felony counts have priority over misdemeanor counts.
- 2) Tax evasion counts (26 U.S.C. § 7201) have priority over all other substantive tax counts.
- 3) The count charged in the indictment or information that carries the longest prison sentence is the major count.

- 4) As between counts under the same statute, the count involving the greatest financial detriment to the United States (i.e., the greatest additional tax due and owing) is the major count.
- 5) As between counts, if the financial detriment does not differ significantly, the relative flagrancy of the offense is determinative.

The United States Attorney may request the Tax Division to consider other factors not included above.

Other Factors in Designating Major Count. The Tax Division may need to designate more than a single count as a major count when the computed guideline sentencing range exceeds the maximum sentence that the court can impose under a single count.

If the Government charges both tax and non-tax counts, the Tax Division's selection of which tax count to designate as the major count may not have any effect on the applicable guideline range. This lack of effect occurs when the offense level of the group or groups of non-tax offenses is nine (9) or more levels higher than the offense level of the group containing the tax charges. *See* U.S.S.G. §§ 3D1.2 and 3D1.4. In such a case, if its designation will not affect the applicable guideline range, the Tax Division may designate a less serious tax offense in the group as the major count.

If all of the tax charges are not part of the same course of conduct or common scheme or plan, the Department's plea policy for Sentencing Guidelines cases may require that the Tax Division either designate one count from each group of unrelated counts as major counts or designate one count from one of the groups of unrelated counts as the major count and have the prosecutor obtain a stipulation from the defendant establishing the commission of the offenses in the other group. *See* U.S.S.G. § 1B1.2(c). The Tax Division engages in this process to determine the combined offense level for the case under U.S.S.G. § 3D1.4.

No Reduction From Felony to Misdemeanor. When the major count of a tax indictment charges a felony offense, the United States Attorney may not accept a plea to a lesser-included offense nor substitute a misdemeanor offense for the felony offense charged. Absent unusual circumstances, the Tax Division will not approve the reduction of a charge from a felony to a misdemeanor merely to secure a plea.

Post-Plea Dismissal of Remaining Counts. After the court accepts a defendant's guilty plea to one or more major counts and imposes a sentence, the United States Attorney may move to dismiss the remaining counts of the indictment or information.

Pleas Taken in Advance of Indictment or Information. A defendant who has not yet been charged sometimes indicates an intent to enter a guilty plea to the major count(s). If this occurs, the United States Attorney, when presenting the factual basis for the prosecution, in compliance with Federal Rule of Criminal Procedure 11, must include the full extent of the defendant's tax violations on all of the counts in order to demonstrate the defendant's actual criminal intent. In most cases, all of the tax charges are related. Consequently, even if the defendant pleads to only a single count, the court should take into account the tax loss from all of the years when it determines the tax loss for the offense to which the defendant pleads.

6-4.320 Nolo Contendere Pleas

Under Department of Justice policy, all government attorneys must oppose the acceptance of nolo contendere pleas. In cases involving tax charges, the United States Attorney may not consent to a plea of "nolo contendere" except in the most unusual circumstances and only after the Assistant Attorney General, Tax Division, has approved a written request. *See* USAM 9-16.010 and 9-27.500. The United States Attorney also must oppose dismissal of any charges to which the defendant does not plead nolo contendere. *See* USAM 9-27.530.

There are several reasons for the Government's opposition to nolo pleas. When pleading "nolo," the defendant may create the impression that the Government has only a technically adequate case that the defendant elects not to contest. Further, a standard guilty plea permits the Government to use collateral estoppel in subsequent civil proceedings (e.g., when a defendant contests a civil fraud penalty). When it obtains a "nolo" plea, however, the Government will not be able to use collateral estoppel in the civil proceeding.

6-4.330 Alford Pleas

In *North Carolina v. Alford*, 400 U.S. 25 (1970), the Supreme Court held that a trial court may accept a defendant's plea of guilty over the defendant's claims of innocence. The United States Attorney should discourage Alford pleas by refusing to agree to terminate prosecutions in situations where a defendant proffers a plea to fewer than all of the pending charges. The United States Attorney may not consent to a so-called Alford plea except in the most unusual circumstances and only after the Assistant Attorney General, Tax Division, or a higher Departmental official, has approved a written request. See USAM 9-16.015 and 9-27.440.

Furthermore, if a defendant tenders an Alford plea to fewer than all of the charges and the court accepts it over the Government's objection, the United States Attorney must proceed to trial on all of the remaining counts that are not barred on double jeopardy grounds, unless the Assistant Attorney General, Tax Division, approves dismissal of the remaining charges.

6-4.340 Sentencing

Rule 32(i)(4)(A)(iii) of the Federal Rules of Criminal Procedure permits the Government to make a statement to the court at the time of sentencing. The United States Attorney should make a full statement of the facts, including the amount of tax that the defendant evaded for all relevant conduct, including how the defendant perpetrated and concealed the fraud, the defendant's past criminal record, and all other information that the court may consider important in imposing an appropriate sentence.

Because a jail sentence provides the maximum deterrent value, the Tax Division prefers that the United States Attorney's sentencing recommendation request that the court impose a jail sentence in addition to a fine and the costs of prosecution. A court's order of probation and a defendant's payment of any civil tax liability in addition to a fine and costs, do not constitute a satisfactory disposition of a criminal tax case.

Notwithstanding the foregoing, the United States Attorney may agree to a sentence of probation (preferably with alternative conditions of confinement) when: 1) the defendant pleads guilty; 2) the sentencing guidelines range is 0-6 months (and within Criminal History Category I); and 3) the United States Attorney personally signs and approves a written memorandum that identifies those unusual and exceptional circumstances that support the appropriateness of agreeing to probation. Examples of exceptional circumstances include the need to secure cooperation against a more culpable party or a serious, post-indictment degradation in the evidence available for trial (such as the death of a witness or the loss or suppression of evidence). The United States Attorney must keep this memorandum in the case file and must forward a copy to the Tax Division when closing the case.

6-4.350 Costs of Prosecution

Congress has provided that, after a jury or court convicts a defendant of any of the principal substantive criminal tax offenses (e.g., 26 U.S.C. §§ 7201, 7203, 7206(1) and (2)), the court must order the defendant to pay the Government's costs of prosecution. Thus, the United States Attorney should seek recovery of the costs of prosecution in criminal tax cases.

6-4.360 Compromise of Criminal Liability/Civil Settlement

While statutory authority under 26 U.S.C. Sec. 7122(a) does exist for the Attorney General, after referral of a case to the Department, to enter into agreements to compromise criminal tax cases without prosecution, as a matter of longstanding policy, such authority is very rarely exercised. If it is concluded that there is a reasonable probability of conviction and that prosecution would advance the administration of the internal revenue laws, any decision to forgo prosecution on the ground that the taxpayer is willing to pay a fixed sum to the United States, would be susceptible to the attack that a taxpayer who is able to pay whatever amount of money the government demanded had been given preferential treatment.

Consequently, proposed criminal tax cases are reviewed without any consideration being given to the matter of civil liability or the collection of taxes, penalties, and interest. In short, proposed criminal tax cases

are examined with the view to determining whether a violation has occurred, to the exclusion of any consideration of civil liability.

Absent extraordinary circumstances, such as permanent loss of tax revenues unless immediate protective action is taken, settlement of the civil liability is postponed until after sentence has been imposed in the criminal case, except when the court chooses to defer sentencing pending the outcome of such settlement. In this event, the IRS should be notified so that it can begin civil negotiations with the defendant.

However, the Tax Division strongly encourages, but does not require, that a plea agreement include certain civil admissions by the defendant, including: (1) admission of either receipt of enumerated amounts of unreported income or claimed enumerated amounts of illegal deductions or improper credits for years set forth in the plea agreement; (2) a stipulation that defendant is liable for the fraud penalty imposed by the Internal Revenue Code (26 U.S.C. Sec. 6663) on the understatements of liability for the years involved; and (3) an agreement by the defendant to file, prior to sentencing, complete and correct initial or amended personal returns for the years subject to the above admissions and, if requested, to provide the IRS with information regarding the years covered by the returns and to pay, at sentencing, all additional taxes, penalties and interest which are due and owing; and (4) an agreement by the defendant not to file any claims for refund of taxes, penalties, or interest for amounts attributable to the returns filed incident to the plea.

6-4.370 Restitution

The Department of Justice authorizes and encourages United States Attorneys to seek restitution in criminal tax cases. In May 2005, the Attorney General issued new Guidelines on Victim and Witness Assistance. Those Guidelines require that prosecutors in all cases "must consider "requesting that the defendant provide full restitution to all victims of all charges contained in the indictment or information, without regard to the counts to which the defendant actually plead[s]." (Pub. L. No. 104-132 § 209; 18 U.S.C. § 3551 note).

A Joint IRS/DOJ Task Force on Restitution developed standard language for the restitution portion of a plea agreement and a proposed restitution order for use by prosecutors in criminal tax cases involving defendants who agree or are ordered to pay restitution. For the Task Force Memorandum, standard restitution plea language, optional restitution plea language, and the recommended form for a restitution, see Tax Resource Manual 18 through 21.

A United States Attorney should direct any questions about restitution in criminal tax cases to the Criminal Appeals and Tax Enforcement Policy Section (CATEPS) of the Tax Division. See Tax Resource Manual 2.

6-4.400 Parallel Proceedings

Consistent with the Department's policies for coordinating criminal, civil, and administrative actions, the Tax Division uses all available judicial remedies and procedures to enforce the tax laws. These actions include criminal prosecutions, civil injunction actions, summons enforcement actions, collection actions, and the defense of civil refund suits. The Government may take these actions simultaneously or sequentially. See Tax Resource Manual 22.

6-5.000
CIVIL TAX
CASE RESPONSIBILITY

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6-5.010 Introduction

The Tax Division's six Civil Trial Sections supervise or handle civil tax litigation in the United States district courts and the state courts. The Civil Trial Sections are generally responsible for cases that arise within their respective geographic areas. In addition, the Civil Trial Sections for the Central and Eastern Regions have nationwide jurisdiction over certain cases of special interest. For a map reflecting the geographical assignments of the Tax Division Civil Trial Sections, see Tax Resource Manual 3. For contact information, including mailing and e-mail addresses and telephone and fax numbers for the Civil Trial Sections, see Tax Resource Manual 4.

Ordinarily, the United States Attorney has trial responsibility in cases arising under 28 U.S.C. § 2410 (except for tax protester cases, actions raising substantive tax issues, and interpleader litigation) and in summons enforcement and bankruptcy litigation that the IRS directly refers to the United States Attorney.

For administrative and informational purposes, the Tax Division trial attorney should advise the United States Attorney of any appearance in the district, and should forward to any Assistant United States Attorney who is counsel of record copies of all documents sent to opposing counsel. The United States Attorney should immediately forward to the assigned Tax Division trial attorney copies of all documents received by the United States Attorney, if such communication does not indicate service on the trial attorney. The United States Attorney should also advise the Tax Division trial attorney of any informal information received that may have a bearing on the just disposition of the case. In those civil matters that the Tax Division assigns to the United States Attorney, he or she will be responsible for the entire trial level proceeding.

The United States Attorney also should keep the Tax Division advised in the manner set forth in this Manual. In situations where the Division has requested immediate notification, the United States Attorney should notify the Chief of the appropriate Civil Trial Section by e-mail, telephone, fax, or overnight delivery. See Tax Resource Manual 4 for section e-mail addresses and other contact information.

The Assistant Attorney General, Tax Division, reserves the prerogative to reassign any civil tax case within the jurisdiction of the Tax Division notwithstanding the provisions of this manual.

6-5.100 Parallel Proceedings

Consistent with the Department's policies for coordinating criminal, civil, and administrative actions, the Tax Division uses all available judicial remedies and procedures to enforce the tax laws, including criminal prosecutions, civil injunction actions, summons enforcement actions, collection actions, and the defense of civil tax refund suits. The Government may take these actions simultaneously or sequentially, as appropriate. See Tax Resource Manual 22.

6-5.110 Affirmative Litigation—Tax Collection Suits

The Tax Division brings tax collection suits at the request of the IRS, pursuant to 26 U.S.C. § 7401. Tax Division attorneys usually handle suits in which the government seeks to

- reduce to judgment assessments for unpaid federal taxes
- foreclose federal tax liens
- recover erroneous tax refunds pursuant to 26 U.S.C. § 7405
- take judgment for failure of a party to honor an internal revenue levy pursuant to 26 U.S.C. § 6332(d)(1)
- set aside a fraudulent conveyance
- obtain a judgment under 26 U.S.C. § 3505 for unpaid taxes against a person who provided net payroll financing
- take other necessary legal actions to collect outstanding federal taxes

On occasion in emergency situations, the IRS may request the United States Attorney to commence suit, due to severe time limitations, but the United States Attorney should not file a complaint until the Chief of the appropriate Civil Trial Section has approved the filing of the suit.

6-5.120 Affirmative Litigation—Other Enforcement Suits

The Tax Division also brings other affirmative non-collection actions seeking judicial assistance in enforcing the internal revenue laws. Such proceedings may include suits to enjoin tax return preparers under 26 U.S.C. § 7407 or to enjoin tax fraud promoters under 26 U.S.C. § 7408; suits under 26 U.S.C. § 7402 to expunge so-called "common law liens" filed against IRS or other government personnel or to enforce compliance with payroll withholding requirements; and applications for judicial approval for seizure of a principal residence, a procedure required by 26 U.S.C. § 6334(e). Tax Division attorneys will handle these proceedings.

6-5.130 Affirmative Litigation—United States' Intervention in Court Actions

The United States may intervene in a civil action to assert a federal tax lien on property that is the subject of the action. *See* 26 U.S.C. § 7424. Where the United States intervenes in a state court action, it has the same right of removal as in cases where it is named a party to an action under 28 U.S.C. § 2410(a).

If, under emergency circumstances, IRS counsel requests the United States Attorney to take immediate action to intervene in a pending action, the United States Attorney should not move to intervene until the Chief of the appropriate Civil Trial Section has approved the intervention.

6-5.140 Affirmative Litigation—Order for Entry to Effect Levy

The IRS must obtain a warrant before entering constitutionally protected premises to seize property for the payment of taxes. In addition, the IRS may use a similar procedure to open a bank safe deposit box. The IRS will directly refer these cases to the United States Attorney. IRS counsel will prepare the pleadings—standard forms, consisting of an application, affidavit, and proposed order—for the United States Attorney to review and submit to the United States District Court. *See* Tax Resource Manual 23-26. If a case requires any substantial deviation from these forms, please consult immediately with the Chief of the appropriate Civil Trial Section.

After receiving a referral from IRS counsel, the United States Attorney should expeditiously review the material to determine whether it meets the legal standard for obtaining an order for entry to effect levy, including making an independent determination that the taxpayer is, indeed, recalcitrant, and that the revenue officer has been unable to gain voluntary admittance to the property for purpose of seizure. The United States Attorney should assure that the revenue officer's affidavit is complete and accurate, and ascertain whether the case has any unusual features that may lead to denial of the writ.

6-5.200 Summons Litigation—Commencement of a Summons Enforcement Proceeding

Summons enforcement proceedings are summary in nature. The Government commences the proceeding when it files a petition, a declaration of the examining/investigating agent, and a proposed order to show cause why the court should not enforce the summons. *See* Summons Enforcement Manual, Tax Resource Manual 27. IRS counsel usually will prepare and forward the pleadings to the United States Attorney along with the request for enforcement.

The Government ordinarily relies on the court's Order to Show Cause to compel the summoned person to appear in court for the summons-enforcement hearing. The Government very rarely seeks the arrest of a summoned person under the attachment authority of 26 U.S.C. § 7604(b) to obtain his appearance at the summons-enforcement hearing. The United States Attorney may not seek the arrest of a summoned person under the attachment authority of 26 U.S.C. § 7604(b) unless the Chief of the appropriate Civil Trial Section authorizes this action in writing. An attachment under 26 U.S.C. § 7604(b) should not be confused with the arrest of the summoned person after a judicial finding and order of contempt for failing to comply with a court order enforcing the summons. No prior authorization is needed to seek arrest and confinement pursuant to an order of contempt.

6-5.210 Summons Litigation—Petitions to Quash or Enjoin IRS Summonses

Title 26 U.S.C. § 7609 concerns summonses issued to third parties. It requires the IRS to give notice to the taxpayer and other persons to whom the records relate ("noticee") when it issues a summons to a third party. The noticee then may petition to quash a third party's compliance with the summons by commencing a proceeding in the appropriate district court. The petition must be filed within 20 days of the date on which notice is given by mailing a copy of the petition to the third party and to the IRS office designated in the notice. The procedural rules pertaining to a petition to quash are jurisdictional. When a petitioner fails to follow these provisions meticulously, the United States Attorney should file a motion to dismiss. *See* Summons Enforcement Manual, Tax Resource Manual 27.

A proceeding to quash is a civil action that is subject to the normal filing fee and to the provisions of Federal Rule of Civil Procedure 4 relating to service of a summons and complaint. Pursuant to Federal Rule of Civil Procedure 12(a)(3), the United States has 60 days to respond to the initial pleading. Since the filing of a petition to quash under 26 U.S.C. § 7609 stays compliance with the summons, the United States Attorney best serves the Government's interest by filing the Government's response expeditiously.

After receiving a petition to quash, the United States Attorney should send a copy to the IRS counsel, who will determine whether the Government should seek to enforce the summons in federal court. If it is determined that the summons is defective, IRS Counsel may direct the IRS to withdraw the summons and, in turn, request that the United States Attorney ask the petitioner to withdraw the petition or ask the court to dismiss it as moot. If the petition appears to raise sensitive or novel issues, the United States Attorney should also send a copy to the Chief of the appropriate Civil Trial Section. *See* USAM 6-5.240.

6-5.220 Summons Litigation—Litigation Support

The Tax Division Summons Enforcement Manual contains guiding legal principles, "how to" procedures, and sample forms. *See* Tax Resource Manual 27 for a WordPerfect version of the forms. A United States Attorney who needs additional help with a case should request assistance from the Chief of the appropriate Civil Trial Section.

6-5.230 Summons Litigation—Direct Referrals to the United States Attorney

IRS counsel will refer directly to the United States Attorney routine requests to enforce most administrative summonses and to defend routine petitions to quash brought under 26 U.S.C. § 7609. The latter may also include a request to enforce the summons(es) pursuant to 26 U.S.C. § 7609(b)(2)(A). In summons

actions that the IRS directly refers to the United States Attorney, the United States Attorney need not obtain Tax Division authorization prior to instituting court proceedings or seeking the enforcement of a summons in response to a petition. *The United States Attorney must obtain prior Tax Division authorization, however, if a case involves sensitive or novel issues, as described in USAM 6-5.240.*

The Appellate Section of the Tax Division will handle all appeals, whether the United States or the other party initiates it. USAM 6-5.260. The United States Attorney should notify the Chief of the appropriate Civil Trial Section if a court renders an adverse decision or another party files a notice of appeal.

6-5.240 Summons Litigation—Exceptions to Direct Referrals

IRS counsel will refer to the Tax Division for handling summons cases involving sensitive or novel issues, including summonses issued to or involving

- attorneys
- tax practitioners, as defined in 26 U.S.C. § 7525
- churches
- the press or members of the news media
- tax accrual workpapers
- foreign document requests
- treaty partners or other matters with international implications
- "John Doe" summonses
- section 6050I
- novel or complex Fifth Amendment claims
- computer software and other non-traditional items
- state and local agencies and courts
- "designated summonses"
- consent directives
- tax shelter promoters
- tax scam promoters
- examinations regarding institution of summons proceedings
- examinations into potential liabilities for penalties under 26 U.S.C. §§ 6700, 6701, 6707, and 6708
- offshore records
- other unique issues that may arise

The IRS will also refer to the Tax Division petitions to quash foreign document requests issued under 26 U.S.C. § 982. Litigation relating to these requests is similar to summons litigation.

The Tax Division may also refer to the United States Attorney for handling a summons that the IRS Counsel has referred to the Tax Division. *See Summons Enforcement Manual, Tax Resource Manual 27.*

6-5.250 Summons Litigation—Prosecution Under 26 U.S.C. § 7210

Under 26 U.S.C. § 7210, the Government can prosecute a person for failure to honor an IRS summons. The United States Attorney may not bring these charges unless and until the Chief of the Tax Division Criminal Enforcement Section for the appropriate region approves and authorizes prosecution in writing.

6-5.260 Summons Litigation—Appeals

The Appellate Section of the Tax Division handles all appeals in all tax cases, whether or not adverse to the Government, including summons cases. *See* USAM 6-5.700, *et seq.* The Assistant Attorney General of the Tax Division must approve exceptions to this policy.

The United States Attorney should immediately notify the local IRS counsel and the Chief of the appropriate Civil Trial Section of all adverse decisions, and of an adverse party's notice of appeal or cross-appeal. The Tax Division treats a court's limited enforcement of a summons as an adverse decision. *See* USAM 6-5.710.

6-5.300 Actions Under 28 U.S.C. § 2410—Allocation of Responsibilities

The United States Attorney handles most suits under 28 U.S.C. § 2410. The Tax Division, however, handles suits under § 2410 for interpleader or in the nature of interpleader, actions that tax protesters file, and actions that raise substantive tax issues. A Tax Division attorney handling related litigation may also handle a foreclosure or other matter that the United States Attorney otherwise would have handled.

6-5.310 Actions Under 28 U.S.C. § 2410—Nature of the Suit

Under 28 U.S.C. § 2410, the United States consents to be sued in a federal or state court having jurisdiction of the subject matter in cases involving real or personal property on which the United States has or claims a mortgage or other lien. The consent is limited to suits that seek to quiet title, foreclose a mortgage or other lien, partition, or condemn the property, interpleader suits, and suits in the nature of interpleader. This waiver of sovereign immunity requires strict compliance with the conditions specified in § 2410 as a jurisdictional prerequisite for suit. The United States has sixty days in which to plead.

When a judicial sale is held, the tax lien of the United States is discharged, provided the United States has received proper notice. The United States then may redeem the realty sold within 120 days from the date of sale, or within a longer period as allowed under local law. *See* 26 U.S.C. § 7425(d)(1). Congress has authorized a revolving fund for this purpose. 28 U.S.C. § 7810. Title 28 U.S.C. § 2410(d) establishes the amount that the United States must pay to exercise its right of redemption for either sales under 28 U.S.C. § 2410(c) or sales in foreclosure. If the United States Attorney thinks that the United States should redeem the realty sold, he or she should contact the local IRS office.

6-5.320 Actions Under 28 U.S.C. § 2410—Procedures

- A. Notice to Tax Division and IRS.** In foreclosure, partition, condemnation, and most quiet title actions (except as provided in paragraph B), the United States Attorney should ask the appropriate local IRS office to provide the information necessary to prepare an answer. The United States Attorney need not forward the summons and complaint to the Tax Division or the local IRS counsel, or correspond with the Tax Division about these cases at all, except as follows: the case involves a tax protester (as described below); a party submits an offer in compromise; an appellate issue arises; or assistance is needed in the case. Please direct any questions to the Chief of the appropriate Civil Trial Section.
- B. Quiet title actions.** Taxpayers, including tax protesters, sometimes use quiet title actions in an attempt to remove federal tax liens from real property. They often do so either to contest the merits of the tax assessment or to challenge the procedural validity of the assessment or lien filing process. In addition, a nominee or alter ego, who holds the property on behalf of a taxpayer, may commence a quiet title action to contest the validity of the IRS nominee or alter ego determination. The Tax Division handles these types of quiet title actions, as well as other quiet title actions that raise similar federal tax issues. The United States Attorney should refer these cases to the Chief of the appropriate Civil Trial Section.
- C. Offer in Compromise.** An offer in compromise that is made in a case being handled by the United States Attorney should be promptly submitted to the Chief of the appropriate Civil Trial Section, with the United States Attorney's recommendation and sufficient supporting data. At the same time, the United States Attorney should forward a copy of the compromise offer, together with a copy of the

complaint, to the local IRS counsel. This procedure does not apply to applications for release of the Government's right to redemption for which the Tax Division has delegated authority to the United States Attorney. See USAM 6-6.140 and 6-6.700.

- D. Appeal.** If another party to the proceeding takes an appeal, the United States Attorney should promptly advise the Chief of the appropriate Civil Trial Section and explain the applicable time limitation. If a court renders a decision adverse to the Government on an issue that the United States Attorney has contested, the United States Attorney should submit an appeal recommendation with sufficient information to enable the Tax Division to evaluate the appropriateness of appeal. Until the Department makes a final decision regarding whether the Government should appeal, the United States Attorney should take all necessary steps to protect the Government's interest, including filing a notice of appeal and preparing the record on appeal.
- E. Lien Priority.** Title 26 U.S.C. § 6323 governs the priority of the federal tax lien in most § 2410 cases. Should any interpretative problems concerning the priority accorded to the tax lien arise, the United States Attorney should contact the Chief of the appropriate Civil Trial Section. He or she may also call upon the local IRS counsel for advice.
- F. Closing.** The United States Attorney should notify the appropriate local IRS office when a case is closed.

6-5.330 Actions Under 28 U.S.C. § 2410—Removal from State Courts

Most cases brought under 28 U.S.C. § 2410 are filed in state court. The Government may remove these cases to the United States district court within 30 days. See 28 U.S.C. § 1444. The 30-day period begins on the date the plaintiff properly serves the United States, not on the date the Government receives pleadings unaccompanied by formal process. See 28 U.S.C. § 1446(b); *Murphy Brothers, Inc. v. Michetti Pipe Stringing, Inc.*, 526 U.S. 344 (1999).

The Tax Division frequently removes a § 2410 case that it is handling, particularly when the case involves a substantial sum of money or turns on application of federal law, or where the purpose of the suit is to interfere with internal revenue procedures (as in tax protester litigation). The Tax Division may, from time to time, contact the United States Attorney either to request assistance with removal or to discuss whether a case merits removal.

6-5.400 Suits Against the United States or Its Officers and Employees—Generally

When served with a summons and complaint in a suit involving the internal revenue laws or otherwise connected with tax administration, the United States Attorney should forward a copy of the summons and complaint to the Chief of the appropriate Civil Trial Section and to the local IRS counsel office, except as provided in USAM 6-5.320 (relating to § 2410 cases). If the court sets an expedited hearing or otherwise requires the Government to respond in less than 60 days, the United States Attorney should telephone the Chief of the appropriate Civil Trial Section immediately and arrange to provide the relevant papers as quickly as possible.

If a person brings suit in a state court naming the United States or an IRS official as a party, the United States Attorney should remove the action to the federal court immediately (except that the United States Attorney may elect not to remove § 2410 cases that the United States Attorney will be handling). In any suit in which the person has not named either the United States or any IRS official as a party (such as a taxpayer's suit against an employer), the United States Attorney should not become involved in any manner.

6-5.410 Tax Refund Suits/Petitions for Readjustment

The Tax Division is responsible for defending tax refund suits brought pursuant to 28 U.S.C. § 1346(a)(1) and 26 U.S.C. § 7422(a), and petitions for readjustment of final partnership administrative adjustments (FPAA) brought pursuant to 28 U.S.C. § 1346(e) and 26 U.S.C. § 6226. When a taxpayer serves the United

States Attorney with a tax refund suit or readjustment petition, the United States Attorney should immediately notify both the Chief of the appropriate Civil Trial Section and the appropriate IRS counsel office.

6-5.420 Actions to Enjoin Tax Assessment or Collection

Taxpayers sometimes bring suit to quash or enjoin an IRS examination or investigation. The tax Anti-Injunction Act, 26 U.S.C. § 7421(a), provides that, except as permitted by the Internal Revenue Code, no person shall maintain a suit for the purpose of restraining the assessment or collection of any tax in any court, whether or not the IRS assessed a tax against that person. Under the Anti-Injunction Act, a person may obtain injunctive relief only when: (1) the person was certain to succeed on the merits, and could demonstrate that collection would cause irreparable harm; or (2) in the extremely rare situation where Congress has provided no judicial review of the IRS's assessment or collection actions, as set forth in *South Carolina v. Regan*, 465 U.S. 367 (1984). When a person brings suit to attempt to restrain the assessment or collection of taxes, he or she must serve the Attorney General. On receiving such a suit, the United States Attorney should immediately notify the Chief of the appropriate Civil Trial Section and the appropriate IRS counsel office.

When the court sets a hearing on a motion for a temporary restraining order or a preliminary injunction, the United States Attorney should immediately notify the Chief of the appropriate Civil Trial Section. The courts often set hearings on injunction cases on very short notice. Thus, when necessary, the Tax Division may consent to an arrangement in which the IRS agrees to take no collection activity for a specified period of time. Alternatively, the Tax Division may consent to a temporary restraining order (TRO). See Fed. R. Civ. P. 65(b). Before committing the United States to temporarily cease collection action or to consent to entry of a TRO, however, the United States Attorney must obtain authorization from the Chief of the appropriate Civil Trial Section.

6-5.430 Declaratory Judgment Actions with Respect to Federal Taxes

The Declaratory Judgment Act, 28 U.S.C. § 2201, excludes from its coverage any suit that a person brings "with respect to Federal taxes," other than actions brought under 26 U.S.C. § 7428, 11 U.S.C. §§ 505 and 1146. The federal tax exception to the Declaratory Judgment Act has the same scope and judicially-created exceptions as the Anti-Injunction Act. See *Alexander v. "Americans United," Inc.*, 416 U.S. 752 (1974). Persons who seek declaratory judgments with respect to federal taxes often seek injunctive relief at the same time. As is the case with suits seeking injunctions against federal taxes, the United States Attorney should immediately notify both the Chief of the appropriate Civil Trial Section and the appropriate IRS counsel office on receiving such a suit.

6-5.440 Jeopardy and Termination Assessment Cases

In suits for judicial review of jeopardy or termination assessments, 26 U.S.C. § 7429 requires the court to hold an expedited hearing within 20 days of the filing of the complaint. On receiving notice of the suit—by service of process or otherwise—the United States Attorney should immediately notify both the Chief of the appropriate Civil Trial Section and the appropriate IRS counsel office.

6-5.450 Suits Under the Freedom of Information Act and the Privacy Act of 1974

The Tax Division's Civil Trial Section, Eastern Region, handles suits against the IRS and the Tax Division brought under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, and under the Privacy Act of 1974, 5 U.S.C. § 552a. When a plaintiff serves the United States Attorney with a complaint in a tax-related FOIA or Privacy Act suit, the United States Attorney should immediately notify the Chief of the Civil Trial Section, Eastern Region, of the filing, and should also notify the appropriate IRS counsel office if the suit concerns IRS documents or activities.

6-5.460 Damage suits under *Bivens* or Tort Theories

The Tax Division represents IRS officers and employees and Department of Justice personnel in civil damage suits based on *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971), or based on common-law tort theories when the alleged misconduct relates to the internal revenue laws or tax administration. Upon receiving a complaint in such actions, the United States Attorney should immediately notify the Chief of the appropriate Civil Trial Section and the appropriate IRS counsel office.

6-5.470 "Wrongful Disclosure" Suits Against the United States

The Internal Revenue Code provides a taxpayer with a cause of action to recover damages where the taxpayer's tax returns and/or tax return information have been disclosed or inspected contrary to the Internal Revenue Code's strict privacy requirements. *See* 26 U.S.C. § 7431. The Civil Trial Section, Eastern Region, handles these cases. When the plaintiff serves the United States Attorney with a complaint in a wrongful disclosure suit, the United States Attorney should immediately notify both the Chief of the Eastern Region and the appropriate IRS counsel office.

6-5.480 "Wrongful Collection" Suits Against the United States

The Internal Revenue Code provides a taxpayer with two causes of action to recover damages where the IRS has engaged in collection practices that contravene or fail to meet statutory standards. First, based on allegations that an IRS employee has negligently, recklessly, or intentionally disregarded any provision of the Internal Revenue Code or of the applicable regulations, a taxpayer may file suit against the United States to recover economic damages. *See* 26 U.S.C. § 7433. Second, for wrongful failure to release a federal tax lien, a taxpayer may also file a damage suit against the United States under 26 U.S.C. § 7432. When a plaintiff serves the United States Attorney with a complaint citing either of these statutes or asserting such claims, the United States Attorney should immediately notify both the Chief of the appropriate Civil Trial Section and the appropriate IRS counsel office.

6-5.490 Subpoenas Served on Employees of the Internal Revenue Service

Frequently, subpoenas are served upon IRS agents and other employees in cases not involving federal taxes, and in which the United States is not a party. The subpoenas purport to require these persons to appear in court to produce official IRS documents and records or to testify with respect to matters that have come to their attention in their official capacity.

Title 26 C.F.R. § 301.9000-1 provides that, in such cases, the internal revenue officer should appear in court and respectfully decline to testify or produce records on the ground that the Treasury regulations prohibit the employee from doing so. In most cases, the IRS will issue the employee specific written instructions that the employee can furnish to the United States Attorney.

When a subpoenaed IRS employee contacts the United States Attorney, the United States Attorney should take steps to protect the employee's and the Government's interests. First, he or she should telephone the Chief of the Civil Trial Section, Eastern Region. Second, contact the opposing counsel. In the Tax Division's experience, if the United States Attorney explains the prohibition, the attorney who issued the subpoena often will agree to release the employee from complying and the United States Attorney will not need to seek court assistance to secure that release. Third, if necessary, he or she should appear with the individual employee before the court issuing the subpoena.

6-5.500 Suits Involving Governmental Immunity from State and Local Taxes

The Tax Division represents the interests of government agencies and officers in contesting the improper imposition of state or local taxes. Requests for assistance come directly from government contractors and members of the Armed Forces, as well as from government agencies. Tax Division attorneys handle all tax immunity matters. The United States Attorney should promptly refer to the Chief of the Civil Trial Section,

Eastern Region, all requests for advice on tax immunity matters or for representation in persuading taxing authorities not to impose a tax or to institute litigation.

6-5.600 Claims of the United States in Bankruptcy, Receivership, Probate, and Insolvency Proceedings—Generally

The IRS files proofs of claim for unpaid taxes in bankruptcy cases, receivership proceedings, and state-court probate and insolvency proceedings. Ordinarily, the IRS does not notify the Tax Division of the filing of these claims. It also may or may not advise the United States Attorney of the filing. When a controversy arises and the IRS requests that the United States Attorney take action or make a court appearance, the United States Attorney should notify the Chief of the appropriate Civil Trial Section as soon as possible and prior to filing any pleading or making any court appearance. The United States Attorney does not need to notify the Tax Division in direct referral bankruptcy cases. *See* USAM 6-5.622.

6-5.620 Bankruptcy Cases—Proofs of Claim

The IRS Insolvency Unit files proofs of claim for taxes directly with the bankruptcy court. The bankruptcy trustee often pays tax claims in due course.

6-5.621 Bankruptcy Cases—Contested Matters and Adversary Proceedings

In contested matters and adversary proceedings, the United States Attorney should promptly forward any pleading involving matters relating to the internal revenue laws to the IRS counsel and the IRS Insolvency Unit. The United States Attorney should notify the Tax Division only when it appears, pursuant to USAM 6-5.622, that the Tax Division will handle the matter.

6-5.622 Bankruptcy Cases—Allocation of Responsibility

The United States Attorneys handle the following bankruptcy matters:

- Complaints or other pleadings to sell property
- Cash collateral hearings
- Conversion from chapter 11 or 13 to chapter 7, or dismissal of chapter 11 or 13 cases
- Motions to compel distribution and accounting
- Motions to pay taxes or stop the pyramiding of taxes
- Motions for a more particularized disclosure statement
- Motions for relief from the automatic stay, including motions to permit commencement or continuation of proceedings before the United States Tax Court
- Objection to confirmation of a plan
- Motion for order compelling the production of records and/or the filing of pre-petition tax returns
- Motion for order compelling the filing of post-petition tax returns
- Motion for order requiring the segregation and/or the deposit of post-petition trust fund taxes
- Adversary proceedings involving dischargeability (except those involving an attempt to evade tax, fraud or novel issues)
- Turn-over hearings
- Objections to proofs of claims (except those involving substantive tax issues, trust fund recovery penalties, evidentiary hearings on disputed matters or important or novel issues)

In a number of districts, IRS attorneys have been appointed Special Assistant United States Attorneys under a program for handling bankruptcy cases. In districts having such a program, Special Assistant United States Attorneys may handle the types of matters listed above. Also, a Tax Division trial attorney may handle such matters because of the trial attorney's involvement in other aspects of the bankruptcy case, the attorney's involvement in other litigation with the debtor, or if the Tax Division has other reasons for handling the matter.

The United States Attorney and/or the IRS will refer all other tax-related bankruptcy matters to the Tax Division, including matters for which IRS National Office requires review, cases in which the debtors are prominent individuals or major corporations, and any matters not subject to the direct referral procedure.

Before filing an acceptance or rejection of a plan of reorganization, IRS counsel will notify the United States Attorney. IRS counsel also will notify the Tax Division when the debtor is a prominent individual or major corporation or when the plan of reorganization would affect litigation that the Tax Division is handling.

6-5.623 Bankruptcy Cases—Appeals from Bankruptcy Court Decisions

The Tax Division decides whether to appeal an adverse bankruptcy court decision, and Tax Division attorneys handle all appeals from such decisions. The United States Attorney should promptly notify the Chief of the appropriate Civil Trial Section and IRS counsel of any adverse bankruptcy court decision, and take all steps necessary to protect the Government's interest, including filing a notice of appeal. The time for appeal from an order of a bankruptcy court is only 10 calendar days, but the bankruptcy court may extend the time for an additional 20 days. Given this short time limit, the United States Attorney should consider requesting an extension of time at the same time that he or she refers the matter to the Tax Division.

The United States Attorney should also promptly notify the Chief of the appropriate Civil Trial Section and IRS counsel if an adverse party appeals a decision favorable to the Government. The Tax Division also handles these appeals.

In jurisdictions where there is a Bankruptcy Appellate Panel, the United States Attorney should consult with the Chief of appropriate Civil Trial Section and determine whether the Government should elect to proceed in the district court rather than before the Bankruptcy Appellate Panel.

Title 11 U.S.C. § 158(d)(2) gives the court of appeals discretionary jurisdiction, under some circumstances, to hear a direct appeal from a judgment or order of the bankruptcy court, bypassing a district court's or Bankruptcy Appellate Panel's intermediate review. This procedure is similar to the interlocutory appeal process under 28 U.S.C. § 1292(b). The Solicitor General must approve a direct appeal that the Government initiates under § 158(d)(2).

For the procedure regarding appeals from orders of a United States district court or Bankruptcy Appellate Panel to a court of appeals, *see* USAM 6-5.720.

6-5.630 Receivership Proceedings

Title 26 U.S.C. § 6871(a) provides that, when a federal or state court appoints a receiver for the taxpayer, the IRS may immediately assess any tax due and file a proof of claim. The United States asserts its priorities in receivership proceedings under 31 U.S.C. § 3713.

Whenever a contest develops as to the merits or priority of an IRS claim, the United States Attorney should notify the Chief of the appropriate Civil Trial Section by sending all relevant pleadings and information. In state court proceedings, the courts generally require the United States to follow the procedural rules and time limits applicable in those proceedings.

6-5.640 Probate Proceedings

In probate proceedings, the IRS sends a proof of claim to the decedent's personal representative. Generally, the representative allows and pays the claim in the due course of the administration of the estate. When the representative does not pay the claim and the IRS wants to initiate collection action, IRS counsel will ask the Tax Division to initiate suit or take other action.

Occasionally, the IRS will request that the United States Attorney seek an order from the probate court compelling the personal representative to satisfy the IRS's proof of claim. If the estate is insolvent, the United States Attorney can sometimes discourage the personal representative's failure to recognize the Government's priority by calling the representative's attention to the provisions of 31 U.S.C. § 3713.

6-5.650 Insolvency Proceedings

Insolvency proceedings in state court take various forms; the most frequent is an assignment for the benefit of creditors. The IRS files proofs of claim in such proceedings. If litigation arises, 31 U.S.C. § 3713 applies. When an objection to an IRS claim is filed, the United States Attorney should notify the Chief of the appropriate Civil Trial Section prior to taking any action and should furnish all relevant pleadings and information.

6-5.700 Appeals in Tax Matters—Generally

The Tax Division handles *all* appeals in *all* tax cases, whether or not adverse to the Government. Only the Assistant Attorney General of the Tax Division may approve exceptions to this policy. The Tax Division's Appellate Section handles all appeals in all tax cases in the courts of appeals. The Tax Division's Civil Trial Sections handle appeals from the decision of a bankruptcy court in tax-related matters to a district court or a Bankruptcy Appellate Panel.

6-5.710 Appeals in Tax Matters—Taxpayer (or Other Party) Appeal

After a taxpayer or other party files a notice of appeal, the United States Attorney should notify the Chief of the appropriate Civil Trial Section, with a copy to the IRS counsel, if it appears that a Tax Division trial attorney did not receive from the court electronic notice of the appeal. The Civil Trial Section then will transfer the case to the Appellate Section of the Tax Division (except for appeals from decisions of a bankruptcy court to the district court or Bankruptcy Appellate Panel, which the Civil Trial Section will handle).

6-5.720 Appeals in Tax Matters—Adverse or Partially-Adverse Decisions

After receiving an adverse or partially adverse district court, Bankruptcy Appellate Panel, or state court decision, the United States Attorney should immediately notify the Chief of the appropriate Civil Trial Section and the IRS counsel office, if it appears that a Tax Division trial attorney did not receive from the court electronic notice of the decision. The United States Attorney also should forward a recommendation concerning appeal, along with any pertinent documents not available electronically, to the Chief of the appropriate Civil Trial Section, in cases handled by the United States Attorney's office. The United States Attorney is responsible for timely filing the notice of appeal and related papers in the district court, in cases handled by the United States Attorney's office.

For a further discussion on appeals, see USAM Title 2 (Appeals).

The Civil Trial Section prepares its own recommendation on whether to appeal, which it forwards to the Appellate Section, along with the files for preparation of the Tax Division's recommendation to the Solicitor General.

When a court enters an adverse judgment or order that requires the United States to make a tax refund or credit, pay attorneys' fees or costs or make some other payment, the United States Attorney should furnish two certified copies of each judgment or order to the Chief of the appropriate Civil Trial Section. The Tax Division needs these copies in order to make prompt payment of the ordered amount, should the Solicitor General decide that the Government will not prosecute an appeal or should the Government lose the appeal.

6-5.730 Appeals in Tax Matters—Government Filing of a Notice of Appeal

In cases handled by the United States Attorney's office, the United States Attorney is responsible for protecting the Government's interests in the case, including filing a timely notice of appeal and any related papers, until the Solicitor General decides whether the Government will prosecute an appeal.

6-5.740 Appeals in Tax Matters—When the Solicitor General Approves an Appeal

If the Solicitor General authorizes an appeal, the Civil Trial Section must take all appropriate steps to perfect an appeal under the rules of the particular court of appeals, and may request the assistance of the United States Attorney.

6-5.750 Appeals in Tax Matters—When the Solicitor General Declines to Appeal

Should the Solicitor General decide that the Government will not prosecute an appeal, the Tax Division will immediately advise the United States Attorney. If the adverse judgment or order requires the United States to make a payment to the opposing side, the Tax Division will then transfer the case to its Post-Litigation Unit, which will process and make prompt payment of the judgment, when required. *See* USAM 6-7.200. In consultation with the Chief of the appropriate Civil Trial Section, the United States Attorney should take all other appropriate action in the trial court in accordance with the Solicitor General's decision.

6-5.800 Applications for Attorneys' Fees and Litigation Expenses

The United States Attorney should notify the Chief of the appropriate Civil Trial Section and the IRS counsel of applications for attorneys' fees and related expenses filed in cases handled by the United States Attorney.

COMPROMISES AND CONCESSIONS

- 6-6.100 Attorney General's Authority to Compromise Cases
 - 6-6.120 Attorney General's Authority to Make Concessions
 - 6-6.130 Delegation of Authority to Compromise and Close Certain Civil Claims
 - 6-6.140 Delegation of Authority to Release Rights of Redemption in Certain Cases
 - 6-6.200 Compromise of Criminal Liability/Civil Settlement
 - 6-6.300 Tax Division Approval Required for Compromises or Concessions
 - 6-6.400 Offers in Compromise—Form of Offer
 - 6-6.412 IRS Form 433-A or 433-B
 - 6-6.420 Offers Submitted to the United States Attorney
 - 6-6.421 Payment of Amount Offered
 - 6-6.422 Time for Processing Offers
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 - 6-6.450 Settlement Negotiations
 - 6-6.500 Compromises of Government Claims—Statutory Interest
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 - 6-6.540 Security for Deferred or Installment Payments
 - 6-6.550 Tax Division Settlement Reference Manual
 - 6-6.600 Compromises of Refund Suits
 - 6-6.612 Concessions of Refund Suits
 - 6-6.613 Issuance of Refund Checks
 - 6-6.620 Compromises of Government Claims
 - 6-6.622 Concessions of Government Claims
 - 6-6.700 Release of Rights of Redemption
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6-6.100 Attorney General's Authority to Compromise Cases

The Attorney General has plenary power to compromise or settle any civil or criminal case that arises under the internal revenue laws and that the IRS refers to the Department of Justice for prosecution or defense.

6-6.120 Attorney General's Authority to Make Concessions

The Attorney General also has plenary authority to concede a case by dismissing a suit or abandoning its defense. Those concessions are sometimes referred to as "administrative settlements," particularly in the context of refund suits.

6-6.130 Delegation of Authority to Compromise and Close Certain Civil Claims

By Tax Division Directive No. 105, the Tax Division has delegated to the United States Attorneys the authority to compromise and close certain civil claims. *See* Tax Resource Manual 28. The Tax Division delegates compromise authority only with respect to judgments for collection that the Tax Division has formally referred, as discussed in USAM 6-8.300. The Tax Division retains final authority to compromise all other civil tax claims that the United States Attorney handles.

6-6.140 Delegation of Authority to Release Rights of Redemption in Certain Cases

By Tax Division Directive No. 83, discussed in USAM 6-6.700, the Tax Division has delegated to the United States Attorneys the authority to release rights of redemption. *See* Tax Resource Manual 29.

6-6.200 Compromise of Criminal Liability/Civil Settlement

As a matter of longstanding policy, the Assistant Attorney General rarely exercises the authority to compromise civil tax liability in conjunction with a plea agreement. *See* USAM 6-4.360.

6-6.300 Tax Division Approval Required for Compromises or Concessions

Except as set forth in Tax Division Directive No. 105, the United States Attorney may not enter into any agreement to compromise, or make any other administrative disposition of, any case within the jurisdiction of the Tax Division without the prior approval of the Tax Division. *See* Tax Resource Manual 28.

6-6.400 Offers in Compromise—Form of Offer

As a general rule, the Tax Division does not require a taxpayer to use a standard form to make an offer in compromise. Ordinarily, it is sufficient if: 1) the taxpayer submits a written offer that the taxpayer or taxpayer's counsel of record has signed; 2) the offer is definite and unambiguous; and 3) the offer sets forth clearly the proposed basis of compromise. A letter from the United States Attorney setting forth the terms of the taxpayer's offer will not suffice unless the taxpayer or the taxpayer's counsel signs the letter and specifically acknowledges, in writing, that the terms set forth in the letter constitute the taxpayer's offer.

Because the IRS may assert offsets under 26 U.S.C. § 6402, the Tax Division generally will not accept an offer that calls for a refund of a specific dollar amount. Instead, in refund cases, the offer should be phrased as scheduling an "overpayment" of tax or of previously paid interest, calculated in accordance with the terms of the offer. For the same reason, the offer should provide for "interest as provided by law" instead of specifying either an amount or the dates from which the interest is to be computed. The offer should state clearly whether interest is due from the taxpayer or from the Government.

6-6.412 IRS Form 433-A or 433-B

In tax cases in which the taxpayer bases his or her offer on an inability to pay, the taxpayer should submit with the offer a sworn statement of assets and liabilities by completing IRS Form 433-A (available at <http://www.irs.gov/pub/irs-pdf/f433a.pdf>) or 433-B (<http://www.irs.gov/pub/irs-pdf/f433a.pdf>) (Collection Information Statement for Wage Earners and Self-Employed Individuals, or for Business).

6-6.420 Offers Submitted to the United States Attorney

Generally, the United States Attorney should forward an offer, together with any appropriate comments and recommendations, directly to the Tax Division.

Normally, the taxpayer need not tender payment with an offer, but the offer should include a specific deadline by which the taxpayer must pay the amount due under the settlement. Generally, the taxpayer should make payment no later than 30 days from the date of the Government's letter accepting the offer.

The United States Attorney's authority to accept or reject offers in compromise regarding judgments is set forth in USAM 6-8.300.

6-6.421 Payment of Amount Offered

The taxpayer should make payments due by cashier's or certified check or money order, payable to the "United States Treasury." If the taxpayer submits a check or money order with the offer, the United States Attorney should hold the check or money order pending the Government's action on the offer. If the Government accepts the offer, the United States Attorney should deposit the check or money order by the direct deposit (lockbox) system pursuant to OBD Order 2110.19 (June 23, 1986), and should advise both the Tax Division and the IRS Service Center of the deposit. If the Government rejects the offer, the United States Attorney should return the check or money order to the offeror. If a bank does not honor any check, or if the taxpayer fails to make any payment by the due date, the United States Attorney should immediately advise the Tax Division.

6-6.422 Time for Processing Offers

When submitting an offer in compromise to the Tax Division for approval, the United States Attorney should allow a sufficient period of time for the Tax Division to act on the offer. The amount of time required will vary, depending upon the nature and complexity of the case, and the amount involved. For example, the Tax Division must submit a settlement involving a refund or credit in excess of \$2 million of income, excess profits, estate or gift tax, or certain excise taxes to the Joint Committee on Taxation. For such a case, the Government is likely to need a minimum of 90 days. Even in a relatively uncomplicated matter, where the case requires no additional investigation or submissions, the Government will need a minimum of 45 days.

Additionally, the Tax Division needs time to consult with IRS counsel or obtain additional information from the IRS. Except in a case that IRS counsel has classified as S.O.P. (Settlement Option Procedure), the Tax Division will always obtain the written recommendation of IRS counsel on an offer in compromise of a tax case. Further, before the Tax Division can act on any offer, the IRS may need to prepare additional computations and/or conduct an investigation. When a settlement is based on collectibility, the IRS almost always needs to conduct an investigation.

For all of these reasons, the United States Attorney should protect the Government's interest by urging the proponent of the offer and the court to allow the Government ample time to process an offer.

6-6.430 Offers Submitted to the Tax Division

At times, a taxpayer will submit a compromise proposal directly to the Tax Division in a case handled by the United States Attorney. In that situation, the Tax Division will request the United States Attorney's recommendation on the offer.

During compromise negotiations and the pendency of the offer, the Tax Division relies on the trial attorney to secure any additional time needed to accomplish the next step in the court proceedings. This protects the Government's interest and permits the Tax Division to take final action on the offer.

6-6.440 Opportunity for Conference Regarding Offers

Ordinarily, the Tax Division will grant a timely request to discuss an offer by the proponent or the proponent's counsel at a conference in Washington, D.C. Where appropriate, the Tax Division may request the United States Attorney to participate in the conference.

6-6.450 Settlement Negotiations

When the United States Attorney participates in settlement negotiations, either alone or in conjunction with the Tax Division trial attorney, he or she should impress upon both the taxpayer's counsel and the court two points about settlements in tax cases. First, the United States Attorney and the

Tax Division trial attorney only have authority to make a recommendation regarding the offer; neither has authority to accept it. Second, except as set forth in Tax Division Directive No. 105, the Attorney General or certain officials of the Department in Washington, D.C., to whom the Attorney General has specifically delegated settlement authority, must take final action on an offer in compromise in tax cases.

6-6.500 Compromises of Government Claims—Statutory Interest

The amount in controversy in a case includes the underpayment of interest under 26 U.S.C. § 6601. Accordingly, interest should not be conceded as part of a settlement unless the Government: 1) faces litigating hazards that affect the Government's ability to establish its claim in full or 2) should concede interest in light of the taxpayer's inability to pay. In a settlement based on collectibility, the taxpayer pays less than the total amount of the Government's claims, with interest, because the taxpayer is unable to pay the full amount. Ordinarily, a settlement based on collectibility should provide that the taxpayer is not entitled to deduct any part of the payment for federal income tax purposes. An exception to this rule may be appropriate only if the United States Attorney anticipates that the taxpayer will actually pay the full amount of the tax and penalties, as well as at least some of the interest, or the tax in question is deductible by the taxpayer.

6-6.520 Collateral Agreements

Generally, if a taxpayer seeks to settle a case because of an inability to pay, there is a possibility that the taxpayer may subsequently come into some money or property. The taxpayer may be an individual or corporate taxpayer, who may acquire future assets through earnings, inheritance or gifts. Therefore, as one of the settlement terms in a collectibility settlement, the United States Attorney should require the taxpayer to enter into an individual or corporate collateral agreement. *See* Tax Resource Manual 30-33. This agreement, known as a "future income collateral agreement," requires the taxpayer to pay increasing percentages of annual income (as defined in the agreement) over a period of years. The future income collateral agreement obligates a taxpayer to pay graduated percentages (usually ranging between 20 to 50 percent) of "annual income" that exceeds a threshold or floor for each year the agreement is in force. The United States Attorney can obtain guidance concerning acceptable terms in collateral agreements, including the duration of the agreement and the percentages of income, from the Tax Division's Civil Trial Sections and Office of Review.

6-6.530 Waiver of Net Operating Losses or Bad Debt Deductions

If a taxpayer has any valuable tax attributes, such as net operating losses or bad debt deductions, and proposes a settlement based on collectibility, the United States Attorney should require the taxpayer to waive those tax attributes for purposes of settlement.

6-6.540 Security for Deferred or Installment Payments

Where an offer provides for the taxpayer to make 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 also provide that the Government will file a satisfaction of judgment when the taxpayer has completed all obligations under the settlement (i.e., paid the amount due under the settlement, including any amount due under a collateral agreement). The settlement should also provide that the IRS will maintain any federal tax liens securing the liabilities being compromised until the taxpayer makes the final payment due under the settlement. Once the taxpayer has made the final payment, the IRS will release the liens.

6-6.550 Tax Division Settlement Reference Manual

The Tax Division Settlement Reference Manual contains a detailed discussion on collectibility compromises which the United States Attorney can consult for further guidance. *See* <http://www.usdoj.gov/tax/readingroom/settlpdf/titlepg.htm>

6-6.600 Compromises of Refund Suits

After the Department accepts an offer in compromise of a refund suit, the case will be terminated pursuant to a stipulation for dismissal. Generally, the stipulation should not include the terms of the compromise. It is contrary to the Department's policy to stipulate for judgment in favor of the taxpayer when the Government has compromised a case. The United States Attorney should never do so without first obtaining written Tax Division authorization. The United States Attorney should send the Tax Division a copy of the stipulation of dismissal.

6-6.612 Concessions of Refund Suits

After the Department approves the concession of a refund suit, if the taxpayer agrees, the stipulation of dismissal should provide that each party will bear its own costs and expenses, including attorneys' fees. Otherwise, the parties should simply stipulate to entry of judgment against the United States.

6-6.613 Issuance of Refund Checks

After the Department approves an offer or a concession that calls for a payment to the taxpayer, the Tax Division will authorize the IRS to issue a refund in the appropriate amount, plus statutory interest. The Tax Division then will transfer the case to its Post-Litigation Unit, which will supervise the issuance of the refund check and/or notice of credit as well as the dismissal of the suit or the filing of a satisfaction of judgment. *See* USAM 6-7.000. The IRS usually requires about 60 days to issue the refund after the amount of the refund has been computed.

In a case that the United States Attorney has handled, the Tax Division will send the refund check and/or notice of credit due under a compromise together with a stipulation of dismissal or satisfaction of judgment to the United States Attorney for delivery to taxpayer's counsel. The United States Attorney should deliver those documents only after receiving a signed stipulation of dismissal.

6-6.620 Compromises of Government Claims

The Tax Division will authorize the United States Attorney to sign a stipulation of dismissal of the Government's claim or of a case that the United States Attorney has handled under the following circumstances: 1) the Department has accepted an offer in compromise of a case; 2) the taxpayer is required to pay the Government within a relatively short period of time (e.g., within 30 days of notification of acceptance); and 3) the United States Attorney has received the total amount due from the taxpayer. In general, the Tax Division does not permit the terms of a compromise to be set forth in the stipulation. Please send a copy of the dismissal order to the Tax Division.

When payment to the Government is due more than 90 days after notification of acceptance, generally the settlement will provide for entry of judgment in the Government's favor. For the policy on security for deferred or installment payments, see USAM 6-6.540. The United States Attorney should send a copy of the judgment to the Tax Division.

The taxpayer should make payments due under a compromise by cashier's or certified check, payable to the "United States Treasury." The taxpayer should submit all such payments (other than those due under a collateral agreement) to the United States Attorney. When the United States Attorney receives the payments, he or she should deposit them by the direct deposit (lockbox) system pursuant to OBD Order 2110.19 (June 23, 1986). The United States Attorney also should notify the Tax Division and the Internal Revenue Service Center that payment has been received. In the event of any default, the United States Attorney should advise the Tax Division immediately. The taxpayer should send payments required under a collateral agreement directly to the Service Center.

6-6.622 Concessions of Government Claims

After the Department approves a concession of a government claim in a case that the United States Attorney is handling, the stipulation of dismissal should provide—if the taxpayer agrees—that each party will bear its own costs and expenses, including attorneys' fees. Otherwise, the stipulation should simply provide for dismissal of the action.

6-6.700 Release of Rights of Redemption

Under Tax Division Directive No. 83, the Tax Division has delegated to the United States Attorneys the authority to accept applications to release the United States' right of redemption under 28 U.S.C. § 2410 in matters involving: 1) real property on which is located only one single-family residence and 2) all other real property having a fair market value that does not exceed \$200,000. *See Tax Resource Manual 29.* The person seeking such a release must pay consideration that equals the value of the right of redemption or \$50, whichever is greater. The limitations as to value or use of the property and the consideration that a person must pay do not apply in those instances where any federal agency requests the release. Form OBD-225 is the prescribed form of application for release of right of redemption in respect of federal tax liens. The instructions to Form OBD-225 set forth detailed information about the procedure that a person who is seeking this release must follow. In all instances not covered by Directive No. 83, the United States Attorney should handle all applications for release of rights of redemption in a manner similar to compromises. *See Tax Resource Manual 34 and 35.*

**POST-LITIGATION
UNIT**

6-7.100 Duties of the Post-Litigation Unit**6-7.200 Delivery of Checks**

6-7.100 Duties of the Post-Litigation Unit

When the Government owes the taxpayer a refund or payment of costs or attorneys' fees as a result of a compromise, concession, or final judgment, the Post-Litigation Unit of the Office of Review is responsible for ensuring that the Government timely issues a refund check, notice of credit, or other check. The unit also closes the case at the appropriate time.

6-7.200 Delivery of Checks

In cases handled by the United States Attorney, the Post-Litigation Unit forwards the refund check and/or notice of credit, together with a notice of adjustment, Form 1331-B, to the United States Attorney. In turn, the United States Attorney should deliver these to the taxpayer's counsel of record. See USAM 6-6.613. When appropriate, the Post-Litigation Unit will also forward a separate check for costs, fees, and expenses payable from the judgment fund. 31 U.S.C. § 1304. If the United States Attorney or the taxpayer disagrees with the amount of a check, the Tax Division should be advised immediately. The Tax Division may instruct the United States Attorney to tender a check to the counsel of record unconditionally in order to stop the running of interest. Acceptance of the refund check does not prejudice the taxpayer's right to claim any additional amount. See 26 U.S.C. § 6611(b)(2).

When handling a settlement that involves only litigation costs or attorneys' fees, the United States Attorney must request payment either from the Judgment Fund under 31 U.S.C. § 3104 or the IRS, as appropriate. Compare 26 U.S.C. § 7430 (d)(1) with 28 U.S.C. § 2412(d)(4).

POST-JUDGMENT COLLECTION MATTERS

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6-8.010 Introduction

The collection of judgments is an essential part of the Tax Division's work. It requires imagination, perseverance, and skill in using federal tax lien and levy law, post-judgment discovery, judicial sale procedures, the Federal Debt Collection Procedures Act (FDCPA), and state judgment execution laws. In its Judgment Collection Manual, the Tax Division sets forth the Tax Division's collection policies, explains the laws that authorize enforced judgment collection, and offers suggestions about how to collect tax judgments. See <http://www.usdoj.gov/tax/readingroom/JCM2004/JCM2004.pdf>.

6-8.100 Tax Division's Responsibility

After a court has entered a money judgment in favor of the United States, either in a suit originating as a collection matter or on a counterclaim, the trial attorney will follow the collection steps outlined in the Tax Division Judgment Collection Manual. During this period of initial collection activity, the Tax Division has the primary responsibility for collecting the judgment.

If the trial attorney is unable to collect the entire amount of the judgment and the court or the parties terminate the litigation, the Tax Division generally refers the judgment to the IRS for further administrative collection and closes its file. On occasion, and only after consultation, the Tax Division may formally refer a judgment to the United States Attorney's Office Financial Litigation Unit (FLU) for further collection efforts. Should it subsequently appear that the Government needs to pursue additional litigation to collect the judgment (e.g., to set aside a fraudulent conveyance), the Tax Division may elect to withdraw the referral and conduct the litigation.

6-8.200 United States Attorney's Responsibility

There are two categories of tax judgment collection cases, for which the United States Attorney has different responsibilities: cases that the Tax Division has formally referred to the United States Attorney to collect a judgment and cases in which the United States Attorney assists the Tax Division in collecting a judgment. Tax Division Directive No. 105. See Tax Resource Manual 28.

- A. **Formal judgment collection referrals.** On occasion, and only after consultation, the Tax Division may formally refer a judgment for collection to the United States Attorney. When it makes a formal referral, the Tax Division will send the United States Attorney a letter stating that it has formally referred the judgment collection case.

In these formal judgment collection referrals, the United States Attorney has the primary responsibility to take further collection efforts. To that end, he or she should take all necessary steps to collect the judgment and to protect the Government's interests. When it refers the case to the United States Attorney, the Tax Division may concurrently request the IRS Technical Services to advise the United States Attorney directly of the existence of potential assets for collection.

The United States Attorney should advise the Tax Division if any problems arise, including any disagreements between the United States Attorney and the IRS about the handling of a formally-referred case. The Tax Division then will assist the United States Attorney in resolving those problems.

Should it appear that the Government needs to pursue additional litigation in order to collect the judgment, the Tax Division may withdraw the referral to the United States Attorney and take responsibility for the litigation.

Case Assistance. In judgment collection cases where the Tax Division has not formally referred the case, the United States Attorney has more limited responsibilities. He or she may have open files and furnish assistance to the Tax Division trial attorney who is assigned to the case. In these cases, however, because the Tax Division has not referred the case to the United States Attorney for handling, the Tax Division will retain primary collection responsibilities.

6-8.300 Compromise Authority of United States Attorneys

As provided in Tax Division Directive No. 105, the Tax Division has authorized United States Attorneys to:

- Reject offers in compromise of judgments in favor of the Government regardless of amount;
- Accept offers in compromise of judgments in favor of the Government, where the amount of the judgment does not exceed \$300,000; and
- Terminate collection activity for judgments in favor of the Government which do not exceed \$300,000, if the United States Attorney concludes that the judgment is uncollectible.

The Tax Division authorizes the United States Attorney to take these actions only for judgments that the Tax Division has formally referred to the United States Attorney for collection. Before taking these actions, the United States Attorney must obtain the written concurrence of the IRS.

The United States Attorney must refer to the Tax Division for resolution offers to compromise judgments where: 1) the United States Attorney and the IRS have a difference of opinion; or 2) the judgment exceeds \$300,000.

6-8.400 Collection of Tax Judgments—Collection Procedures

The United States Attorney should consult the Tax Division's Judgment Collection Manual for a detailed discussion of special procedures used in collecting tax judgments. These procedures are different from those used when the United States Attorney collects other judgments in favor of the United States. For example, the IRS can use a levy to collect a tax judgment; state exemption statutes do not apply to tax judgments; and federal tax liens have special characteristics. *See* 26 U.S.C. § 6323. Additionally, post-judgment interest on tax judgments accrues at a different rate than the non-tax judgment rate and is compounded daily. *See* <http://www.usdoj.gov/tax/readingroom/JCM2004>.

6-8.420 Collection of Tax Judgments—Disclosure and Use of Tax Returns and Tax Return Information

Pursuant to 26 U.S.C. § 6103(h)(2)(A), the IRS may disclose tax returns and return information of tax judgment debtors to the United States Attorney for use in collecting tax judgments. The statute prohibits the disclosure or use of such returns and return information to collect non-tax judgments in favor of the United

States. The United States Attorney must use extreme care to ensure that returns and return information are used only to collect tax judgments.

6-8.430 Collection of Tax Judgments—Assistance of IRS Personnel

The IRS specially trains its local IRS Technical Services personnel in the collection of tax indebtedness. The Technical Services staff also has continuing access to financial data that is contained in tax returns that the judgment debtor may have filed after the United States obtained the judgment. The United States Attorney may find this information useful in judgment collection efforts.

The United States Attorney should request that the IRS Technical Services verify any financial statement that a taxpayer submits in connection with an offer to compromise a judgment or in response to a request for financial information.