

[Criminal Tax Manual](#)

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## **1.00 ORGANIZATION AND AUTHORITY**

### ***1.01 THE FEDERAL CRIMINAL TAX ENFORCEMENT PROGRAM***

#### ***1.01[1] The Tax Division's Criminal Enforcement Mission***

The Tax Division's criminal enforcement mission is to protect the integrity of the federal income tax system by prosecuting criminals who defraud the Internal Revenue Service. In pursuit of this mission, Tax Division prosecutors work cooperatively with the Internal Revenue Service, the Treasury Inspector General for Tax Administration (TIGTA),<sup>1</sup> and United States Attorneys to investigate alleged tax crimes, to identify appropriate charges, to secure convictions, and to defend them on appeal.

#### ***1.01[2] The Tax Division's Criminal Enforcement Credo***

Tax Division prosecutors work cooperatively with Assistant United States Attorneys, Internal Revenue Service agents and attorneys, and TIGTA agents to seek the most effective, efficient, and expeditious means to punish criminals who obstruct or defraud the Internal Revenue Service and to deter future violations.

#### ***1.01[3] Selection of Charges***

The exercise of prosecutorial discretion in criminal tax cases should be guided by the standards applicable to all criminal prosecutions handled by the Department of Justice. See United States Attorneys' Manual (*USAM*), § 9-27.000, *et seq.* The Tax Division therefore should authorize prosecution for the most serious readily provable offense. See [USAM, § 9-27.300](#). The Tax Division should authorize additional charges if they are necessary to ensure that the information or indictment reflects the nature and extent of the defendant's criminal conduct and to provide the basis for an appropriate sentence or if they will significantly enhance the strength of the government's case against the defendant or a codefendant. See [id. § 9-27.320](#). Charging decisions should reflect strategic prosecutorial judgments about how best to ensure that the defendant will

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<sup>1</sup> In July 1998, Congress passed the [IRS Restructuring and Reform Act of 1998 \(RRA98\)](#), creating the TIGTA. [Treasury Order 115-01](#), dated February 14, 2013, delineates the specific authorities granted to the TIGTA by law and those delegated by the Secretary of the Treasury.

be convicted and held accountable for his entire course of criminal conduct,<sup>2</sup> regardless of whether the appropriate charges are suggested by the investigating agency.<sup>3</sup>

#### ***1.01[4] Overview of the Federal Criminal Tax Program***

The federal criminal tax enforcement program is designed to protect the public interest in preserving the integrity of this Nation's self-assessment tax system through vigorous and uniform enforcement of the internal revenue laws. [USAM, § 6-4.010](#). Criminal tax prosecutions serve to punish the violator and promote respect for the tax laws. Because there are insufficient resources to prosecute all violations, deterring others from violating the tax laws is a primary consideration.

#### ***1.01[4][a] Authority of the Tax Division***

The Assistant Attorney General for the Tax Division of the United States Department of Justice supervises the federal criminal tax enforcement program. [28 C.F.R. § 0.70](#). The Division is responsible for supervising all criminal proceedings arising under and related to the internal revenue laws, with certain limited exceptions.

Tax Division jurisdiction under [28 C.F.R. § 0.70\(b\)](#) depends on the nature of the underlying conduct rather than the particular criminal statute used to prosecute the defendant. In addition to Title 26 tax crimes, the Tax Division has authority over prosecutions for other crimes when they relate to tax offenses. Non-Title 26 statutes used to prosecute tax crimes include 18 U.S.C. § 287 (false claims), 18 U.S.C. §§ 286, 371 (conspiracy to defraud the United States), 18 U.S.C. § 1001 (fraud and false statements in matters within the jurisdiction of a government agency), 18 U.S.C. §§ 1341-1344 (mail, wire, and bank fraud, when the mailing, wiring, or representation charged is used to promote or facilitate any criminal violation arising under the internal revenue laws, either as substantive offenses or as the predicate acts for RICO or specified unlawful activities for money laundering offenses), 18 U.S.C. §§ 1501-1511 (obstruction of justice and obstruction of a criminal investigation), 18 U.S.C. §§ 1621-22 (perjury and subornation

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<sup>2</sup> A defendant who engages in a criminal conspiracy and commits substantive crimes generally should face prosecution for both conspiracy and substantive charges. A defendant who commits tax evasion and obstructs an investigation by submitting false documents likewise should be charged with multiple counts.

<sup>3</sup> The Tax Division generally prefers to bring Title 26 charges in traditional tax prosecutions, but other criminal statutes may be used in appropriate cases.

of perjury), and 18 U.S.C. § 1623 (false declarations before a grand jury or court). 28 C.F.R. §§ [0.70](#), [0.179](#).

### ***1.01[4][b] Organization of the Tax Enforcement Program***

The criminal tax enforcement process involves the collaborative efforts of (1) IRS Criminal Investigation (CI) special agents; (2) attorneys with the IRS's Office of Chief Counsel Criminal Tax Division (CT);<sup>4</sup> (3) TIGTA special agents; and (4) Assistant United States Attorneys. Each plays a key role in the investigation, evaluation, and prosecution of tax crimes.

Within the Tax Division, four sections administer the enforcement of the nation's criminal tax laws: the Criminal Appeals and Tax Enforcement Policy Section (CATEPS) and three Criminal Enforcement Sections -- Northern, Southern, and Western -- with responsibility over designated geographical regions of the United States. Each section is supervised by a Section Chief, who reports to the Deputy Assistant Attorney General for Criminal Matters and the Assistant Attorney General of the Tax Division. See *infra* [§ 1.13](#) (Criminal Enforcement Sections Organization Chart). The three regional Criminal Enforcement Sections review evidence of alleged tax crimes and decide whether to accept the cases for grand jury investigation or prosecution and transmit them to the United States Attorneys' Offices, or decline them and return them to the IRS. CATEPS handles appeals in criminal tax cases tried by Tax Division personnel, coordinates appeals in prosecutions tried by United States Attorneys, and processes adverse decision memoranda for the Solicitor General in criminal tax cases. In addition, CATEPS helps formulate criminal tax policies and coordinates the Tax Division's position on legislative proposals.

Most criminal tax cases are investigated and prosecuted by Assistant United States Attorneys, with oversight and advice from the Tax Division's Criminal Enforcement Sections. Trial attorneys in the Tax Division's Criminal Enforcement Sections also litigate criminal tax cases with Assistant United States Attorneys or by themselves.

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<sup>4</sup> Since July 2000, the IRS CT National Office has been directed by the Division Counsel/Associate Chief Counsel (Criminal Tax), who reports to the IRS Chief Counsel. IRS Criminal Tax docket attorneys are assigned to 28 field offices of CI, and Criminal Tax Area Counsel are co-located with the four CI Directors of Field Operations (DFOs). The IRS CI operation is independent of the CT attorneys, who are charged with providing legal advice to CI.

## ***1.02 TAX DIVISION AUTHORITY***

United States Attorneys generally must secure Tax Division approval (1) before initiating a criminal tax grand jury investigation *and* (2) before bringing criminal tax charges. See [§ 1.02\[1\]](#), *infra*. By general delegation of the Assistant Attorney General, however, there are two exceptions to the rule.

First, when there is a preexisting grand jury investigation of particular targets for non-tax matters, such as fraud or drug violations, the Tax Division authorizes United States Attorneys to “expand the grand jury investigation” of those targets to include tax allegations, provided that the Tax Division receives notice of the expansion and does not object. See [§ 1.03\[2\]\[b\]](#), *infra*. United States Attorneys still must secure Tax Division approval before bringing charges in such “grand jury expansion” cases.

Second, in a limited category of cases the Tax Division authorizes United States Attorneys to make investigation, prosecution, and declination decisions without prior approval. Most of these cases involve false refund claims filed in the names of nonexistent or unknowing taxpayers. See [§ 1.05\[1\]](#), *infra*.

### ***1.02[1] Department of Justice Regulations***

The Tax Division’s authority over criminal tax cases is codified at 28 C.F.R. §§ 0.70 - 0.71:

Title 28 -- ***Judicial Administration***

PART 0 (Zero) -- ***ORGANIZATION OF THE DEPARTMENT OF JUSTICE***

#### ***Subpart N -- Tax Division***

##### ***§ 0.70 General functions.***

The following functions are assigned to and shall be conducted, handled, or supervised by, the Assistant Attorney General, Tax Division:

- (a) Prosecution and defense in all courts, other than the Tax Court, of civil suits, and the handling of other matters, arising under the internal revenue laws, and litigation resulting from the taxing provisions of other Federal statutes (except civil forfeiture and civil penalty matters arising under laws relating to liquor,

narcotics, gambling, and firearms assigned to the Criminal Division by Section 0.55(d)).

(b) Criminal proceedings arising under the internal revenue laws, except the following: Proceedings pertaining to misconduct of Internal Revenue Service personnel, to taxes on liquor, narcotics, firearms, coin-operated gambling and amusement machines, and to wagering, forcible rescue of seized property (26 U.S.C. 7212(b)), corrupt or forcible interference with an officer or employee acting under the Internal Revenue laws (26 U.S.C. 7212(a)), unauthorized disclosure of information (26 U.S.C. 7213), and counterfeiting, mutilation, removal, or reuse of stamps (26 U.S.C. 7208).

(c)(1) Enforcement of tax liens, and mandamus, injunctions, and other special actions or general matters arising in connection with internal revenue matters.

(2) Defense of actions arising under section 2410 of Title 28 of the United States Code whenever the United States is named as a party to an action as the result of the existence of a Federal tax lien, including the defense of other actions arising under section 2410, if any, involving the same property whenever a tax-lien action is pending under that section.

(d) Appellate proceedings in connection with civil and criminal cases enumerated in paragraphs (a) through (c) of this section and in Section 0.71, including petitions to review decisions of the Tax Court of the United States.

**§ 0.71 *Delegation respecting immunity matters.***

The Assistant Attorney General in charge of the Tax Division is authorized to handle matters involving the immunity of the Federal Government from State or local taxation (except actions to set aside ad valorem taxes, assessments, special assessments, and tax sales of Federal real property, and matters involving payments in lieu of taxes), as well as State or local taxation involving contractors performing contracts for or on behalf of the United States.

Tax Division also has authority under [28 C.F.R. § 0.179](#) et seq. to prosecute obstruction of criminal tax investigations, including obstruction of justice (18 U.S.C. §§ 1501-1511), perjury (18 U.S.C. §§ 1621, 1622), false declarations before a grand jury or court (18 U.S.C. § 1623), fraud and false statements in matters within the jurisdiction of a

government agency (18 U.S.C. § 1001), and conspiracy to defraud the United States (18 U.S.C. § 371):

**§ 0.179a *Enforcement responsibilities.***

(a) Matters involving charges of obstruction of justice, perjury, fraud or false statement, as described in Section 0.179, shall be under the supervisory jurisdiction of the Division having responsibility for the case or matter in which the alleged obstruction occurred. The Assistant Attorney General in charge of each Division shall have full authority to conduct prosecution of such charges, including authority to appoint special attorneys to present evidence to grand juries. However, such enforcement shall be preceded by consultation with the Assistant Attorney General in charge of the Criminal Division, to determine the appropriate supervisory jurisdiction. (See 38 C.F.R. 0.55(p).)

(b) In the event the Assistant Attorney General in charge of the Division having responsibility for the case or matter does not wish to assume supervisory jurisdiction he shall refer the matter to the Assistant Attorney General in charge of the Criminal Division for handling by that Division.

***1.02[2] Criminal Violations Arising Under the Internal Revenue Laws***

Tax Division jurisdiction under 28 C.F.R. § 0.70(b) depends on the nature of the underlying conduct rather than the particular criminal statute used to prosecute the defendant. Whenever the violation arises under the internal revenue laws, Tax Division authorization is required before charges are brought under any statute.<sup>5</sup>

In general, an offense is said to arise under the internal revenue laws when it involves (1) evasion of some responsibility imposed by the Internal Revenue Code, (2) obstruction or impairment of the Internal Revenue Service, or (3) an attempt to defraud the Government or others through the use of mechanisms established by the Internal Revenue Service for the filing of internal revenue documents or the payment, collection, or refund of taxes. Thus, for example, a prosecution or grand jury investigation of a violation of 18 U.S.C. 1521 involving the filing of a false lien against the property of an Internal Revenue Service employee by a tax defier on account of the employee's

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<sup>5</sup> Tax Division authorization also is required in any case that involves parallel state and federal tax violations, if charges are based on the parallel state tax violations.



performance of official duties, such as conducting an audit or investigation of the tax defier, must be authorized by the Tax Division.

### ***1.03 SOURCES OF CRIMINAL TAX REFERRALS***

In most criminal tax cases, tax information is disclosed to the Department of Justice by the IRS under the “referral” authority of 26 U.S.C. § 6103(h).<sup>6</sup> Before a case is referred to the Department of Justice, the IRS has authority to investigate using its administrative summons power. That power terminates when the Secretary of the Treasury has recommended that the Attorney General prosecute or conduct a grand jury investigation of a person for an offense connected with the administration of the internal revenue laws. 26 U.S.C. § 7602(d)(A)(I).

Under appropriate circumstances, the IRS can consult with Department of Justice prosecutors for “pre-referral advice,” that is, without making a referral for a grand jury investigation or prosecution that deprives the IRS of the power to use its summons authority.

A criminal tax case may also be referred to the Department of Justice by TIGTA for grand jury investigation or prosecution. These investigations typically involve non-forcible interference with an officer or employee acting under the Internal Revenue laws (26 U.S.C. 7212(a)); tax preparer refund schemes; or perjury, conspiracy, false statements, obstruction or fraud related to a tax matter before the IRS. Other criminal matters are referred directly to a United States Attorney’s Office.

#### ***1.03[1] IRS Administrative Investigations***

Criminal Investigation (CI) makes many referrals after conducting investigations using the summons procedures of 26 U.S.C. § 7602. These investigations, known as “administrative investigations,” typically are initiated when CI receives information about possible criminal violations of tax, money laundering, or bank secrecy laws. In administrative investigations, special agents normally examine records and interview

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<sup>6</sup> Title 26 § 6103 authorizes the IRS and TIGTA to disclose tax returns and return information to the Department of Justice for use in criminal and civil tax cases on its own initiative (Section 6103(h)(2) and (3)) and for use in non-tax criminal cases pursuant to a court order (Section 6103(i)(1)). Sections 6103(h)(4) and 6103(i)(4) permit the Department to disclose such returns or return information in civil or criminal judicial proceedings relating to tax administration and in non-tax criminal cases and related civil forfeiture cases, respectively. For more about Section 6103, see [Chapter 42](#), below.

witnesses pursuant to the use of summonses. Administrative investigations also may involve the use of search warrants or undercover operations.<sup>7</sup>

At the conclusion of an administrative investigation, the CI Special Agent-in-Charge (SAC) may refer the case to the Department of Justice with a recommendation to institute a criminal prosecution or to conduct further investigation using a grand jury. The Tax Division may authorize prosecution, authorize a grand jury investigation to gather additional evidence before deciding whether to prosecute, or decline prosecution and return the case to the IRS.

### ***1.03[2] Grand Jury Investigations***

In addition to conducting administrative investigations, CI special agents may assist Department of Justice attorneys in conducting grand jury criminal tax investigations.<sup>8</sup> As appropriate, TIGTA special agents are also available to assist Department of Justice attorneys in conducting grand jury criminal tax investigations.

#### ***1.03[2][a] IRS or TIGTA Requests for Grand Jury Investigations Involving Only Title 26 Offenses***

If the IRS recommends a grand jury investigation in a new case involving only potential tax offenses, the referral is evaluated by a Criminal Enforcement Section.

An IRS CI referral generally includes the following information:

- A. identification of the recommended defendant(s) or grand jury target(s) and all the tax returns at issue, identification of all taxpayers involved, and all indications of wrongdoing which support the contemplated charges;
- B. identification of potential witnesses and recommendations as to the testimonial and documentary evidence to be sought before the grand jury;
- C. a summary of the progress of the investigation to date, including all investigative steps taken, all evidence developed (including witnesses contacted and their

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<sup>7</sup> For a complete discussion of the procedures CI special agents follow in conducting administrative investigations and the scope of such investigations, see Internal Revenue Manual Part 9, § 9.5. TIGTA does not have authority to issue a summons and does not conduct “administrative” investigations related to potential tax violations. A discussion of the procedures followed by TIGTA special agents is contained in [Chapter 400, Section 250](#), of the TIGTA Operations Manual.

<sup>8</sup> For a complete discussion of the procedures CI special agents follow when participating in grand jury investigations, see Internal Revenue Manual Part 9, § 9.5, Section 2.

testimony), and all summonses issued but not yet complied with (including the status of summons enforcement activities);

- D. a summary of any existing or prospective civil actions against the subject(s);
- E. the reason(s) why a grand jury investigation is being requested (e.g., the need for quick action rather than the administrative process, the need for subpoenas rather than administrative summonses, and any other relevant factors); and
- F. the importance of the anticipated prosecutions to compliance.

If TIGTA requests a grand jury investigation in a case involving only potential tax offenses, it will do so by submission of TIGTA OI Form “Request for Grand Jury Investigation.” The referral is evaluated by a Criminal Enforcement Section.

The Tax Division reviews a proposed grand jury investigation pursuant to the procedures discussed in [§ 1.04\[1\]](#), *infra*.

***1.03[2][b] Expansion of Ongoing Non-Title 26 Offense Grand Jury Investigations to Include Potential Tax Offenses***

If a United States Attorney’s Office is conducting a grand jury investigation of a non-tax criminal offense and determines that criminal tax offenses may also have occurred, the U.S. Attorney may desire to expand the scope of the grand jury investigation to include tax offenses. Subject to certain restrictions, United States Attorneys are authorized to expand preexisting non-tax grand jury investigations to include tax offenses by the same persons, under a general delegation of authority by the Assistant Attorney General for the Tax Division ([Directive 86-59](#)). See [§ 1.05\[2\]\[d\]](#), *infra*.

The United States Attorney makes a written request to the SAC to evaluate the criminal tax potential of evidence uncovered by the grand jury investigating non-tax offenses. If the SAC decides to participate in the grand jury investigation, the IRS makes a referral of the matter to the Department of Justice in the form of a written response to the U.S. Attorney, with notification to the Tax Division.<sup>9</sup> The Tax Division reviews the

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<sup>9</sup> Pursuant to IRM § 9.5.2.3.1.2 (11-05-2004), the IRS requires the following information from a U.S. Attorney who requests IRS assistance: the name and taxpayer identification number (TIN) of the subject(s); the names of other law enforcement agencies involved in the investigation; any non-tax violations; the years involved; and probable tax violations. If the request includes grand jury information, it should specifically authorize the disclosure of grand jury material to IRS personnel in accordance with the Rule 6(e) of the Federal Rules of Criminal Procedure. The authorization should include disclosure of information

matter to ensure that it is within the scope of the Tax Division's delegation order, [Directive 86-59](#). See [§ 1.05\[2\]\[d\]](#), *infra*.

#### ***1.04 AUTHORITY TO AUTHORIZE INVESTIGATION AND PROSECUTION***

Section Chiefs have discretion, upon consultation with the Deputy Assistant Attorney General, to vary the Tax Division's review procedures depending upon the complexity and sensitivity of a case and the adequacy of memoranda prepared by the IRS, TIGTA, or the United States Attorney's Office.

##### ***1.04[1] Grand Jury Investigation Authorizations***

###### ***1.04[1][a] Review Procedure***

A Criminal Enforcement Section attorney generally writes a memorandum evaluating a case that is referred for grand jury investigation. An Assistant Chief or the Tax Division Special Counsel for Enforcement Operations generally reviews the trial attorney's memorandum and prepares a separate recommendation. The memoranda are then forwarded to the Section Chief, and, if appropriate, to the Deputy Assistant Attorney General or Assistant Attorney General, who has authority to authorize a grand jury investigation.

###### ***1.04[1][b] Standard of Review***

A grand jury investigation should be considered only if there are articulable facts supporting a reasonable belief that a tax crime is being or has been committed. [USAM, § 6-4.211\(B\)](#). If the threshold is satisfied, the prosecutor also should consider the factors articulated in the *Principles of Federal Prosecution* to determine whether a grand jury investigation and any resulting prosecution would be an appropriate use of prosecutorial resources. [USAM, § 9-27.220](#), *et seq.*

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necessary to evaluate the request. Finally, the request should include a statement indicating whether there is an "ongoing" grand jury investigation.

### ***1.04[1][c] Tax Division Review of USAO Grand Jury Expansions***

The Tax Division reviews proposed grand jury expansions only to ensure that they fall within the delegation order, [Directive 86-59](#). See [§ 1.05\[2\]\[d\]](#), *infra*.

### ***1.04[2] Prosecution Authorizations***

#### ***1.04[2][a] Standards of Review***

In determining whether to authorize prosecution, the Tax Division first considers whether the admissible evidence is sufficient to sustain a conviction beyond a reasonable doubt and whether there is, in light of the evidence and the likely defenses, a reasonable probability of conviction. [USAM, § 6-4.211](#). If the threshold is satisfied, the Tax Division also considers the factors articulated in the *Principles of Federal Prosecution* to determine whether a prosecution would be an appropriate use of prosecutorial resources. [USAM, § 9-27.220](#), *et seq.* The exercise of prosecutorial discretion in tax cases is guided by the same standards applicable in all other federal criminal prosecutions. Prosecution may be declined if no substantial federal interest would be served by prosecution, the person is subject to effective and adequate prosecution in another jurisdiction, or there exists an adequate non-criminal alternative to prosecution. [USAM, § 9-27.220](#), *et seq.*

Civil remedies generally are not an adequate alternative for deliberate and significant tax fraud. The prospect of a criminal conviction and the imposition of jail time are necessary to deter tax crime and punish tax criminals in order to preserve the integrity of the nation's self-assessment tax system.

#### ***1.04[2][b] Procedures for Prosecution Authorizations in IRS Administrative Cases***

At the conclusion of an administrative investigation, the IRS Special Agent prepares a Special Agent's Report ("SAR") summarizing the evidence and recommending charges. In most cases, an IRS Criminal Tax attorney analyzes the evidence and proposed charges and prepares a Criminal Evaluation Memorandum ("CEM"). The IRS SAC then refers the matter (reports and exhibits) to the Tax Division for review and authorization.

### ***1.04[2][b][1] Simple Cases***

Tax Division Section Chiefs have discretion, upon consultation with the Deputy Assistant Attorney General, to dispense with the standard review procedure in administrative cases referred by the IRS if the cases are relatively simple.<sup>10</sup> Cases designated by the Section Chief as simple cases receive expedited review from the Tax Division. A senior attorney conducts a summary review of the case to determine whether there are any evident issues that require an in-depth review. If no such issue is present, the attorney writes a brief memorandum recommending expedited approval. The Section Chief may assign the case to an Assistant Chief for review and concurrence, or the Chief may authorize prosecution, without review by an Assistant Chief, under authority delegated from the Assistant Attorney General.

### ***1.04[2][b][2] Complicated Cases***

The Section Chief generally assigns complicated matters to a trial attorney for review. The trial attorney prepares a written evaluation, known as a Prosecution Memorandum, discussing the prosecutorial merits. The memorandum analyzes the proposed charges, defendants, method of proof, evidentiary issues, and policy concerns. The trial attorney makes a recommendation whether the case should be prosecuted. The trial attorney generally prepares the Prosecution Memorandum within forty-five days after the Section receives the case.

The Section Chief then assigns the case to an Assistant Chief for review. The Assistant Chief reviews the trial attorney's Prosecution Memorandum, and Conference Memorandum if there was a Tax Division conference (*see* [§ 1.04\[2\]\[b\]\[3\]](#), *infra*), and the IRS reports and exhibits. The Assistant Chief then prepares a written evaluation, known as a Review Note. The Review Note discusses the merits of the case and relevant issues, and includes a prosecution recommendation.

On most matters, the Section Chief may then authorize prosecution under authority delegated from the Assistant Attorney General. In cases where (a) the Chief and

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<sup>10</sup> The IRS designates administrative cases as "complex" or "non-complex." When the Tax Division authorizes prosecution in a case designated as non-complex, the U.S. Attorney should, within 90 days, initiate prosecution or recommend to the Tax Division that the Tax Division decline the matter or handle it. USAM, § 6-4.244.

Assistant Chief disagree, (b) a significant policy issue exists, or (3) other special factors are present, the Deputy Assistant Attorney General or the Assistant Attorney General will act on the case. See [§ 1.12](#), *infra*.

#### ***1.04[2][b][3] Tax Division Conferences***

If the taxpayer requests a conference with the Tax Division, it usually will be granted. A Tax Division conference is not a matter of right, however. Defense counsel generally has an opportunity to meet with an IRS attorney during an administrative investigation, and always has an opportunity to meet with the Assistant United States Attorney who ultimately handles the prosecution. The Tax Division therefore will not delay the review of a case in order to hold a conference unless there is reason to believe that defense counsel will provide information that will be useful to the government in making its prosecutorial decision. The Tax Division also may decline to grant a conference if the Assistant United States Attorney requests such action, for example, in advance of an arrest when there is reason to believe that the defendant is a flight risk.

A conference gives the putative defendant an opportunity to present any explanations or evidence which he or she desires the Tax Division to consider before deciding whether to authorize prosecution. A conference is not an opportunity to explore the Government's evidence. Prior to or during the conference, the Tax Division generally advises the taxpayer of the proposed charges (including the years and tax returns), the method of proof, and criminal tax computations provided by the IRS. [USAM, § 6-4.214](#).

Defense counsel generally appears on behalf of the taxpayer, but the taxpayer may choose to participate in person. The Tax Division does not treat factual representations made by the taxpayer's representative at the conference as admissions of the taxpayer. The Government may, however, use representations made by the taxpayer's representative to authenticate a document or to develop investigative leads. If the taxpayer attends the conference, the Government may use statements made by the taxpayer without restriction.

After the conference, the prosecutor prepares a written memorandum summarizing the defense presentation. The prosecutor submits this Conference Memorandum with his or her Prosecution Memorandum.

If a conference has been held and the Tax Division authorizes prosecution or grand jury investigation, the Tax Division generally notifies defense counsel by mail shortly after transmitting the case to the United States Attorney.

If a conference has been held in an administrative investigation and the Tax Division declines prosecution, the Tax Division generally notifies defense counsel sixty working days after it notifies the Internal Revenue Service.

***1.04[2][c] Procedures for Prosecution Authorizations Arising From Grand Jury Investigations***

At the conclusion of a tax grand jury investigation, the United States Attorney conducting the investigation provides an analysis of the investigation to the Tax Division and recommends either that charges be brought or that prosecution be declined and the investigation be terminated. A copy of a proposed indictment or information may accompany the recommendation. [USAM, § 6-4.242](#). The IRS SAC also refers the SAR, CEM, and exhibits to the Tax Division in a grand jury investigation. [USAM, § 6-4.125](#).

Review procedures similar to those discussed above ([§ 1.04\[2\]\[b\]](#)) are followed within the Tax Division in grand jury cases. There is close communication with the Assistant United States Attorney conducting the grand jury investigation.

The Tax Division usually makes a final prosecution decision at the same levels and with the same considerations as in the review of an administrative case. The Deputy Assistant Attorney General or the Assistant Attorney General will resolve any significant disagreements between the United States Attorney and the Criminal Enforcement Section.

***1.04[2][d] Conferences in Grand Jury Cases***

If a putative defendant requests a conference, the Tax Division may grant one if the Tax Division attorney concludes, upon consultation with the Assistant United States Attorney, that there is reason to believe that defense counsel will provide information that will be useful to the government in making its prosecutorial decision and that there is no risk of flight or obstruction of justice. If the Division does grant a conference, the Assistant United States Attorney who conducted the investigation is welcome to attend the conference in person or by telephone.



## ***1.04[3] Immunity***

### ***1.04[3][a] Immunity During Administrative Investigations***

#### ***(1) Judicial Immunity Pursuant to Compulsion Orders***

Legal authority to grant immunity during IRS administrative investigations exists under 18 U.S.C. § 6004. See [IRM, § 9.4.5.12.1](#) (02-01-2005). However, grants of immunity in such investigations are infrequent. The Tax Division Assistant Attorney General must approve such a grant of immunity.

#### ***(2) Proffer Letters***

In some administrative investigations, the target of an administrative investigation may refuse an unconditional interview but may be willing to submit to an interview if a prosecutor provides a proffer letter that restricts direct use of the target's statements in the government's case-in-chief, does not restrict indirect or collateral use, and does not preclude use for impeachment. A proffer interview in such a case may facilitate plea discussions, convince the government to forego prosecution in favor of cooperation, or cause the government to decline further investigation. In such cases, the IRS special agent should refer the matter to the Tax Division for advice. In appropriate cases, a Tax Division prosecutor will issue a proffer letter.

### ***1.04[3][b] Immunity During Grand Jury Investigations***

#### ***(1) Judicial Immunity Pursuant to Compulsion Orders***

18 U.S.C. § 6001, *et seq.*, governs the granting of "use" immunity to persons required by court order to testify during a grand jury investigation or trial. ***Kastigar v. United States***, 406 U.S. 441 (1972). The Assistant Attorney General for the Tax Division authorizes applications for immunity under 18 U.S.C. §§ 6001-6003 in matters involving criminal violations of the Internal Revenue Code. [28 C.F.R. § 0.175](#).

#### ***(2) Letters of Assurance***

In some instances, a prosecutor may issue a letter of assurance when a prospective witness claims the Fifth Amendment but does not request a court order before providing testimony. So long as the witness is not a target of the investigation, the United States

Attorney conducting the grand jury investigation is authorized to grant such a letter of assurance consistent with his or her usual practice. Thus, the compulsory process of 18 U.S.C. § 6001, *et seq.*, is not the only means of granting "use" immunity to a witness.

### **(3) *Proffer Letters***

United States Attorneys are authorized and encouraged to issue proffer letters that restrict direct use of the statements of a subject or target, but do not restrict indirect or collateral use and do not preclude use for impeachment. The United States Attorney conducting the grand jury investigation is authorized to grant such proffer immunity consistent with his or her usual practice.

### ***1.04[4] Undercover Investigations***

#### ***1.04[4][a] IRS Undercover Investigations***

Undercover investigations in which IRS agents participate are classified by the IRS as either Group I or Group II. All Group I undercover operations must be approved by the Chief, Criminal Investigation. The Director of Field Operations may approve Group II undercover operations. Generally, Group I operations are those that exceed six months in duration. In addition, Group I approval is required for any operation that involves specified sensitive issues. [IRM, § 9.4.8.3.1](#) (8-27-2007). Group II operations include all other undercover activity not meeting the requirements for Group I. *See generally* [IRM, § 9.4.8](#).

Pursuant to a Memorandum of Understanding between the Department of Justice and the Internal Revenue Service, Group I undercover operations are reviewed by an Undercover Committee comprising IRS and Department of Justice personnel. A representative of the Tax Division is a member of the Undercover Committee when the investigation involves a matter arising under the supervisory authority of the Tax Division.

#### ***1.04[4][b] TIGTA Undercover Investigations***

TIGTA undercover investigations are classified, like the IRS's, as either Group I or Group II. Undercover operations within TIGTA are approved by the Deputy Inspector General for Investigations (Group I) or an Assistant Inspector General for Investigations

(Group II). Department of Justice personnel are not involved in the review of TIGTA undercover operations, absent special circumstances.

## ***1.05 DELEGATION OF AUTHORITY TO UNITED STATES ATTORNEYS***

### ***1.05[1] Prosecution Delegations***

Although the general rule is that the Tax Division must specifically approve criminal tax investigations and prosecutions before United States Attorneys initiate any proceeding, an exception to this review process exists in matters that the IRS and the TIGTA may "directly" refer to the United States Attorney. [USAM, § 6-4.243](#). The United States Attorney may initiate or decline prosecution of direct referral matters without prior approval from the Tax Division. Nevertheless, once prosecution has been initiated, the indictment, information, or complaint may not be dismissed without the prior approval of the Tax Division. See [USAM, § 6-4.246](#).

The IRS may directly refer the following categories of tax cases to a United States Attorney without prior Tax Division approval: (1) all Title 26 and Title 18 offenses involving certain designated excise taxes; (2) 18 U.S.C. §§ 286 and 287, multiple filings of false and fictitious returns claiming refunds, when the target files multiple returns in a single year claiming false refunds in the names of non-existent or unknowing taxpayers;<sup>11</sup> (3) 26 U.S.C. §§ 7215 and 7512, violations of the trust fund laws; (4) "ten percenter" matters<sup>12</sup> involving the failure to report gambling income pursuant to 26 U.S.C. § 7206(2), but only if there is an arrest that occurs at the time of the offense; (5) prosecutions pursuant to 26 U.S.C. §§ 7203 and 7206 regarding IRS Forms 8300, relating to cash received in a trade or business pursuant to 26 U.S.C. § 6050I, provided that the prosecution involves solely cash received in a trade or business as required by 26 U.S.C. § 6050I and the matter does not involve the prosecution of accountants, physicians, or attorneys (acting in their professional representative capacity) or their employees; casinos or their employees; financial institutions or their employees; local, state, federal or foreign public officials or political candidates; members of the judiciary; religious

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<sup>11</sup> The authority to conduct grand jury investigations of these false claim offenses also is delegated to the United States Attorneys. See § 1.05[2][a], *infra*.

<sup>12</sup> "Ten percenting" is the practice whereby a gambler attempts to hide his winnings by engaging a third party to cash a winning race track ticket, generally in exchange for 10% of the winnings. In this way, the winnings are reported to the IRS on a Form W-2G in the name of the third party, instead of the actual winner. See *United States v. Monteiro*, 871 F.2d 204 (1st Cir. 1989).

leaders; representatives of the electronic or printed news media; officials of a labor union; and publicly held corporations and/or their officers.<sup>13</sup>

The TIGTA may directly refer the following categories of tax cases to a United States Attorney without prior Tax Division approval: (1) violations involving physical assaults, threats of force or violence (26 U.S.C. § 7212(a)); (2) unauthorized disclosure of information (26 U.S.C. § 7213); (3) unauthorized inspection of returns or return information (26 U.S.C. § 7213A); (4) offenses committed by IRS employees in connection with internal revenue laws (26 U.S.C. § 7214), with the exception of IRS employee tax fraud; (5) disclosure or use of information by preparers of returns (26 U.S.C. § 7216); and (6) those cases identified in the preceding paragraph related to IRS categories of tax cases.<sup>14</sup>

### ***1.05[2] United States Attorney Initiated Grand Jury Investigations***

#### ***1.05[2][a] Direct Referrals***

##### ***(i) IRS Direct Referrals***

United States Attorney is authorized to conduct a grand jury investigation for matters arising under the internal revenue laws in direct referral matters. See [§ 1.05\[1\]](#), *supra*, and [USAM, § 6-4.243](#). Grand jury investigations in direct referral matters are generally not necessary, except where related to investigations of false and fictitious claims for tax refunds, in violation of 18 U.S.C. §§ 286 and 287.<sup>15</sup> The SAC refers the case to the United States Attorney by sending him or her a grand jury investigation letter (and completed IRS Form 9131) and related exhibits and by sending a copy of all those materials to the Tax Division. In cases involving arrests or other exigent circumstances,

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<sup>13</sup> In such direct referral cases, the Internal Revenue Service must send to the Tax Division a copy of its referral letter to the United States Attorney.

<sup>14</sup> A majority of TIGTA investigations involve non-tax matters and are directly referred to the United States Attorneys for prosecution.

<sup>15</sup> The delegation of authority to the United States Attorney for investigations of false and fictitious claims for tax refunds, in violation of Sections 286 and 287, is limited to cases in which the SAC has determined, based upon the available evidence, that the case involves a situation where an individual (other than a return preparer as defined in 26 U.S.C. § 7701(a)(36)), with intent to obtain tax refunds to which he/she is not entitled, has filed or conspired to file, for a single tax year, multiple tax returns on behalf of himself/herself or in the names of nonexistent taxpayers or real taxpayers who do not intend the returns to be their own. Cases in which the target has recruited real individuals to file returns in their own names are excluded from the delegation. Tax Division Directive No. 96, dated December 31, 1991.

the Special Agent-in-Charge also must send the request-for-grand-jury-investigation letter (together with the completed Form 9131) to the appropriate Criminal Enforcement Section of the Tax Division by telefax.

Any case directly referred to a United States Attorney's Office for grand jury investigation that does not fit the above fact pattern, or in which the IRS Special Agent-in-Charge has not forwarded a copy of the referral letter to the Tax Division (by overnight courier), will be considered an improper referral and outside the scope of this delegation of authority. In no such case may the United States Attorney's Office authorize a grand jury investigation. Instead, the case should be forwarded to the Tax Division for authorization.

**(ii) *TIGTA Direct Referrals***

All TIGTA cases directly referred to a United States Attorney's Office, for grand jury investigation or for prosecution, are done so by the TIGTA Special Agent-in-Charge. TIGTA procedures for referring matters to the United States Attorney's Office are contained in [Chapter 400, Section 250.13, of the TIGTA Operations Manual](#).

***1.05[2][b] Tax Division Referrals for Prosecution***

The United States Attorney is authorized to conduct a grand jury investigation into matters arising under the internal revenue laws referred for prosecution by the Tax Division, to the extent necessary to prepare the case for indictment.

***1.05[2][c] Tax Division Referrals for Grand Jury Investigation***

The United States Attorney is authorized to conduct a grand jury investigation into matters arising under the internal revenue laws referred for that purpose by the Tax Division, to the extent necessary to complete the investigation.

***1.05[2][d] Expansion of Non-tax Grand Jury Investigations in a Single Judicial District to Include Possible Federal Tax Crimes – Tax Division Directive No. 86-59***

A United States Attorney or other delegated official<sup>16</sup> may approve a request to expand a non-tax grand jury investigation to include inquiries into potential federal criminal tax violations in a proceeding that is being conducted within the sole jurisdiction of the designated official's office, provided that the delegated official determines that:

1. there is reason to believe, based upon information developed during the course of the non-tax grand jury proceedings, that federal criminal tax violations may have been committed;
2. the attorney for the Government conducting the subject non-tax grand jury inquiry has deemed it necessary in accordance with Fed. R. Crim. P. 6(e)(3)(A)(ii) to seek the assistance of IRS personnel to assist the attorney in enforcing federal criminal law;
3. there is no other active grand jury investigation of the matter being conducted in another judicial district;
4. the target(s) are not persons with national prominence -- such as local, state, federal, or foreign public officials or political candidates, members of the judiciary, religious leaders, representatives of the electronic or printed news media, officials of a labor union, and major corporations and/or their officers;
5. a written request seeking the assistance of IRS personnel and containing details about the alleged federal tax offense(s) is sent by the designated official to the appropriate Internal Revenue Service official;

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<sup>16</sup> The authority to approve a request to expand a non-tax grand jury investigation to include inquiry into possible federal criminal tax violations has been conferred on the following individuals: (1) any United States Attorney appointed under 28 U.S.C. § 541 or 546; (2) any Attorney-In-Charge of a Criminal Division Organization Strike Force established pursuant to 28 U.S.C. § 510; and (3) any Independent Counsel appointed under 28 U.S.C. § 593.

6. the Tax Division receives a copy of the request to expand the grand jury to include potential tax violations, and the Tax Division interposes no objection to the request;
7. the Internal Revenue Service has made a referral pursuant to the provisions of 26 U.S.C. § 6103(h)(3) in writing stating that it (1) has determined that there is reason to believe that federal criminal tax violations have been committed, (2) agrees to furnish the personnel needed to assist the Government attorney in his or her duty to enforce federal criminal law, and (3) has forwarded to the Tax Division a copy of the referral; and
8. The grand jury proceedings will be conducted in sufficient time to allow the results of the tax segment of the grand jury proceedings to be evaluated by the IRS and the Tax Division prior to the initiation of criminal proceedings.

The authority delegated includes the authority to designate the targets (subjects) and the scope of the tax grand jury inquiry, including the tax years considered to warrant investigation. The delegation also includes the authority to terminate such grand jury investigations, provided that prior written notification is given to both the Internal Revenue Service and the Tax Division. If the designated official terminates a tax grand jury investigation or the targets (subjects) thereof, then the designated official must state in its correspondence that the notification terminates the referral of the matter pursuant to 26 U.S.C. § 7602(d).

The delegation of authority does not include the authority to file an information or seek an indictment on tax matters. The United States Attorney may not seek an indictment or file an information without specific prior authorization of the Tax Division.

### ***1.05[3] Search Warrants***

The Tax Division generally has the authority to approve the execution of search warrants in matters arising under the internal revenue laws.

The TIGTA is authorized to submit to a United States Attorney's Office consensual monitoring (non-telephonic) and search warrant requests in investigations under the jurisdiction of the Tax Division. Section 6103(k)(6) of Title 26 provides for the ability to make this investigative disclosure to gather evidence. Such requests do not require pre-approval or notification of the Department of Justice. However, after evidence is obtained from either consensual monitoring or the execution of a search warrant, final prosecution consideration must be coordinated with the Department of Justice.

***1.05[3][a] Authority Delegated to United States Attorneys –***

***Tax Division Directive No. 52***

Tax Division has delegated to United States Attorneys, except in the circumstances discussed below, the authority to approve the execution of Title 26 U.S.C. or tax-related Title 18 U.S.C. search warrants directed at offices, structures, or premises owned, controlled, or under the dominion of the subject or target of a criminal investigation. The delegation of authority does not affect the statutory authority and procedural guidelines relating to the use of search warrants in criminal investigations involving disinterested third parties as contained in 28 C.F.R. § 59.1, *et seq.*

***1.05[3][b] Exclusive Authority Retained by the Tax Division***

The Tax Division retains exclusive authority to approve a search warrant that is directed at offices, structures, or premises owned or controlled by the following:

1. an accountant or accounting firm;
2. a lawyer;
3. a physician;<sup>17</sup>
4. a local, state, federal, or foreign public official or political candidate;
5. a member of the clergy;

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<sup>17</sup> Chiropractors and dentists are not included in this category. In addition, if the search is directed at a physician's residence that is not known to have any patient records and the warrant does not seek to seize any patient records, then Tax Division authorization is not required.



6. a representative of the electronic or printed news media;
7. an official of a labor union; and
8. an official of an organization deemed to be exempt under 26 U.S.C. § 501(c)(3).

Any application for a warrant to search for evidence of a criminal tax offense not specifically delegated must be specifically approved in advance by the Tax Division. The Tax Division will consider the following factors: (1) whether the suspected crime is significant enough to justify use of a search warrant, (2) whether the affidavit establishes probable cause, (3) whether the particular evidence at issue can be secured without a search warrant (*i.e.*, whether a search warrant is the "least-intrusive means" to obtain the evidence), and (4) whether there is a reasonable need for the evidence (*i.e.*, whether the case can be investigated and prosecuted with other evidence, with no significant delay in completing the investigation and no significant diminution in the likelihood of conviction).

United States Attorney is required to notify the Tax Division within ten working days, in writing, of the results of each executed search warrant and to transmit to the Tax Division copies of the signed search warrant (and attachments and exhibits), inventory, and any other relevant papers.

### ***1.06 APPEALS***

The procedures and rules governing appeals are set forth in the [USAM, §§ 2-1.000](#), *et seq.*, and [9-2.170](#), and should be reviewed and followed when handling a criminal tax or other appellate matter. Attention is called in particular to the following procedures set forth in the *USAM*.

#### ***1.06[1] Appellate Responsibility for Criminal Trials***

The United States Attorney has the appellate responsibility for handling in the courts of appeals criminal tax cases that have been tried by the United States Attorney, unless the Assistant Attorney General, Tax Division, elects that the Tax Division handle a particular category of cases or a case on appeal. [USAM, § 2-3.100](#).

The Criminal Appeals and Tax Enforcement Policy Section (CATEPS) has the appellate responsibility for handling criminal tax cases that have been tried by attorneys

in the regional Criminal Enforcement Sections of the Tax Division. In addition, the Division stands ready to assist the United States Attorneys' Offices in handling criminal tax cases on appeal -- by writing the brief, by consulting on issues being briefed, or by providing sample briefs and arguments. United States Attorneys should direct requests for assistance to the Chief of CATEPS at (202) 514-5396.

### ***1.06[2] Recommendations for Appeal of Adverse Decisions***

In all cases resulting in adverse decisions, the Solicitor General must authorize all recommendations for and against appeal, the filing of a petition for rehearing en banc, the filing of a petition for certiorari, the filing of a petition seeking mandamus or other extraordinary relief, and the filing of a direct appeal to the Supreme Court. This requirement applies to any interlocutory appeals under 28 U.S.C. § 1292(b) and litigation in state courts subject to review by a higher state court or by the United States Supreme Court. It also applies to the filing of an amicus curiae brief. [USAM, §§ 2-2.121-24](#) and [9-2.170](#).

The need for immediate reporting of adverse decisions, whether at the trial level or the appellate level, is stressed in [USAM, § 2-2.110](#):

In any civil or criminal action before a United States District Court or a United States Court of Appeals, in which the United States is a litigant, and a decision is rendered adverse to the government's position, the United States Attorney must immediately transmit a copy of the decision to the appellate section of the division responsible for the case.

To secure the necessary authority from the Solicitor General to appeal or not appeal a criminal tax case, the United States Attorney or the Chief of the appropriate regional Criminal Enforcement Section of the Tax Division "must promptly" make a report to the Chief of CATEPS. See [USAM, § 2-2.110, et seq.](#) The Tax Division prefers that such reports be made *promptly by telephone* to the Chief of CATEPS at (202) 514-5396.

Following receipt of an adverse decision, CATEPS solicits the views of the regional Criminal Enforcement Section of the Tax Division, the United States Attorney, and the Internal Revenue Service on appropriate further action. CATEPS then prepares a Tax Division memorandum for the Solicitor General, which reflects the views and

recommendation of the Tax Division, as well as the views of the United States Attorney and the Internal Revenue Service. In cases tried by Criminal Enforcement Section personnel of the Tax Division, the Tax Division prosecutor should confer with the United States Attorney with respect to the recommendation to be made by the Criminal Enforcement Section to CATEPS.

### ***1.07 REQUESTS FOR TRIAL ASSISTANCE***

While United States Attorneys usually have the initial responsibility for the trial of criminal tax cases, the Criminal Enforcement Sections of the Tax Division have staffs of highly qualified and specialized criminal tax trial attorneys who will prosecute or render assistance in the trial of a criminal tax cases upon request. The Tax Division can assume all trial responsibilities of a particular case, assign an attorney to act as cocounsel with an Assistant United States Attorney, or provide legal research or trial strategy assistance to the prosecutor(s) handling the case.

A supervisor from the United States Attorney's Office should make a written request to the appropriate Criminal Enforcement Section Chief if the supervisor wants a Tax Division attorney assigned to the case. The request should state the relevant reasons, and be made well in advance of any court setting. Where time is a factor, the request may be by e-mail or phone to the Section Chief. Telephone requests should be confirmed in writing.

### ***1.08 STATUS REPORTS***

After the Tax Division has referred a criminal tax case to a United States Attorney, it is essential that the United States Attorney advise the Tax Division of all developments. As the case progresses, the minimum information required for the records of the Tax Division is as follows:

1. a copy of the indictment returned (or no billed) or the information filed, which reflects the date of the return or filing or the date of any no bill;
2. date of arraignment and kind of plea;
3. date of trial or entry of guilty plea;
4. verdict and date verdict returned;

5. date and terms of sentence; and
6. date of appeal and appellate decision.

It is important that the United States Attorney provide this information regarding developments in pending cases in a timely manner, in order that the Department's files reflect the true case status and that, upon completion of the criminal case, the Tax Division can close the case timely and return it to the Internal Revenue Service for the collection of any revenue due, through civil disposition. [USAM, § 6-4.248.](#)

### ***1.09 RETURN OF REPORTS AND EXHIBITS***

Upon completion of a criminal tax prosecution by a final judgment and the conclusion of appellate procedures, the United States Attorney should return exhibits to witnesses. The United States Attorney should retain all other grand jury material under secure conditions, in accordance with the requirement of maintaining the secrecy of grand jury material. Fed. R. Crim. P. 6(e). The United States Attorney should return all non-grand jury reports, exhibits, and other materials furnished by the Internal Revenue Service for use in the investigation or trial to the Special Agent-in-Charge, Criminal Investigation, by certified mail, return receipt requested, as directed in the Tax Division's letter authorizing prosecution. If the TIGTA investigated and referred the case, then the United States Attorney should return the exhibits to the TIGTA, Attention: Special Agent-in-Charge.

### ***1.10 PRESS RELEASES***

Press releases promote the important goals of general deterrence and public accountability. News reports about tax enforcement actions deter tax fraud by other people and promote the Justice Department's obligation to keep the public informed about our criminal enforcement efforts. The Tax Division therefore recommends that United States Attorneys issue press releases at appropriate times (*e.g.*, indictment, guilty plea, trial conviction, and sentencing) in criminal tax cases, based on information in the public record.

Press releases in criminal tax cases must comply with Department of Justice policy (*USAM*, § 1-7.000, *et seq.*), the Internal Revenue Code (26 U.S.C. § 6103),<sup>18</sup> and the Federal Rules of Criminal Procedure (Rule 6(e)), as well as any local court rules. Most importantly, criminal tax press releases generally should be based expressly upon the court record, because some appellate courts have found that 26 U.S.C. § 6103 restricts the release of information from IRS investigations, regardless of whether the information was also in the public record, unless the immediate source of the information is a public record. *See, e.g., Johnson v. Sawyer*, 120 F.3d 1307 (5th Cir. 1997); *Mallas v. United States*, 993 F.2d 1111 (4th Cir. 1993); *Rodgers v. Hyatt*, 697 F.2d 899 (10th Cir. 1983). Accordingly, no public statement should be made about a tax case unless the information in the statement is attributed to a specific public source.

#### ***1.10[1] Press Releases Announcing an Indictment or Arraignment***

A press release announcing an indictment or arraignment should contain only information set forth in the publicly filed document and indicate that the source of the information is the indictment. For example, a press release announcing an indictment could read: “According to the indictment, during the years 1993 and 1994, John Doe received income in excess of \$100,000 which he failed to report on his income tax returns. The indictment further charges . . . .”

#### ***1.10[2] Press Releases Announcing Conviction or Sentencing***

A press release announcing a conviction or sentencing should be based solely on information made public at the trial or in pleadings publicly filed in the case, and should indicate that the source of the information is the public court record. Facts that do not appear in the indictment (even minor details, such as the defendant’s age, full name, address, or a summary of the allegations) should be included in the press release only if they are obtained from *and attributed to* court records.

#### ***1.10[3] Tax Return Information in Non-Tax Criminal Cases and Civil Proceedings***

Tax return information obtained for use in non-tax criminal cases and related civil forfeiture cases pursuant to a Section 6103(i) order is subject to the same disclosure restrictions as return information provided by the IRS for use in criminal tax cases. In

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<sup>18</sup> Section 6103 provides generally that tax returns and return information are confidential and can be disclosed only in the manner provided in the section. See [Chapter 42](#), *infra*.

addition, return information provided to the United States Attorney's office by the IRS in money laundering or narcotics cases that the IRS has determined are "related to tax administration," under § 6103(b)(4), may be subject to the same non-disclosure rules.

***1.10[4] Press Releases Issued by a United States Attorney's Office***

Press releases issued by a United States Attorney's Office do not require approval by the Assistant Attorney General or the Office of Public Affairs. If a Tax Division prosecutor is involved in a case, the press release should be issued jointly in the name of the United States Attorney and the Assistant Attorney General for the Tax Division. The Tax Division also requests that the United States Attorney acknowledge in the press release any Tax Division prosecutor who participated in the case.

If appropriate, the Assistant Attorney General may provide a quote to include in a U.S. Attorney's press release. All comments attributed to the Assistant Attorney General must be approved by the Assistant Attorney General or his or her designee. Tax Division prosecutors who want to include a comment by the Assistant Attorney General should consult with their Section Chief or the Counsel to the Deputy Assistant Attorney General for Criminal Matters to secure advance approval of the proposed comment.

***1.10[5] Press Releases in Cases Handled Exclusively by the Tax Division***

In cases handled exclusively by Tax Division prosecutors, the Tax Division generally will issue press releases through the Justice Department's Office of Public Affairs. Criminal Enforcement Section attorneys should have a draft press release approved by their Section Chief or designee and forward a copy of the Section-approved draft press release by e-mail to the Counsel to the Deputy Assistant Attorney General for Criminal Matters at least 48 hours prior to the event. The press release should be prominently marked "DRAFT" and "NOT FOR RELEASE" to prevent inadvertent early release.

After the underlying event giving rise to the press release occurs, the prosecutor should insert any additional relevant information, review the press release for accuracy, and ensure that all information is attributed to the public record. The Tax Division prosecutor is ultimately responsible for ensuring that the press release is accurate and based on public information. The Office of Public Affairs will not issue a press release until the Tax Division confirms that the prosecutor has reviewed its contents. Tax

Division press releases must be approved and given a release number by the Office of Public Affairs before they are issued. When it may not be feasible to secure final approval of a press release from the Tax Division and the Office of Public Affairs prior to the occurrence of the underlying event (for example, a sentencing in Hawaii), the Office of Public Affairs may authorize the prosecutor to issue the release, subject to final amendment and verification by the prosecutor.

***1.10[6] Tax Division to Receive Copy of Final, Issued Press Release***

The final version of any press release issued in a tax case should be sent to the Tax Division, preferably by e-mail, to the Counsel to the Deputy Assistant Attorney General for Criminal Matters.

Examples of press releases issued in criminal tax cases are available on the Tax Division’s internet site at [www.usdoj.gov/tax](http://www.usdoj.gov/tax).

**1.11 PRIOR APPROVALS**

<b>USAM Section</b>	<b>TYPE &amp; SCOPE OF APPROVAL</b>	<b>WHO MUST APPROVE</b>
<a href="#"><u>6-4.120</u></a>	<b>Grand jury investigations of tax violations, except those delegated to United States Attorneys</b>	<b>Chief, Criminal Enforcement Section, or higher Tax Division official</b>
<a href="#"><u>6-4.123</u></a>	<b>Expansion of a Title 26 grand jury investigation to include new target</b>	<b>Chief, Criminal Enforcement Section, or higher Tax Division official</b>
<a href="#"><u>6-4.200</u></a> ; <a href="#"><u>6-4.209</u></a> ; <a href="#"><u>6-4.210</u></a> ; <a href="#"><u>6-4.218</u></a> ; <a href="#"><u>6-4.242</u></a> ;	<b>Prosecution of Title 26 and other offenses arising under the internal revenue laws, including stolen identity refund fraud, some conspiracy, mail fraud, wire fraud, bank fraud, RICO, and money laundering offenses</b>	<b>Chief, Criminal Enforcement Section, or higher Tax Division official</b>

[9-105.750](#)

[6-4.245](#)

**Declinations of tax prosecutions**

**Chief, Criminal Enforcement Section**

[6-4.125;](#)

**Terminate tax grand jury investigation without prosecution**

**Chief, Criminal Enforcement Section**

[6-4.218;](#)

[6-4.242;](#)

[6-4.245](#)

[6-4.245](#)

**Presenting the same tax matter to another grand jury after a no bill**

**Assistant Attorney General**

[6-4.246](#)

**Dismissal of indictments, informations, and complaints**

**Deputy Assistant Attorney General**

[6-4.310](#)

**Plea to a lesser charge than Tax Division's major count**

**Chief, Criminal Enforcement Section, or higher Tax Division official**

[6-4.320;](#)

**Taking of a nolo contendere or *Alford* plea in criminal tax prosecution**

**Assistant Attorney General**

[6-4.330;](#)

[9-16.010;](#)

[9-16.015;](#)

[9-27.500](#)

[9-2.031](#)

**Dual and successive prosecution of criminal tax cases**

**Assistant Attorney General**

[6-4.130](#)

**Search warrants in specified cases**

**Deputy Assistant Attorney General**

[9-23.130;](#)

**Immunity or non-pros agreement in tax or tax-related investigation**

**Deputy Assistant Attorney General**

[9-27.640](#)



6-4.200;

9-13.410

**Grand jury or trial  
subpoena to attorney for  
info relating to  
representation**

**Assistant Attorney General**

### ***1.12 DELEGATION OF AUTHORITY WITHIN THE TAX DIVISION***

The authority of the Assistant Attorney General has been delegated as follows:<sup>19</sup>

#### ***1. Authority of the Assistant Attorney General that is Not Delegated***

Action in the following criminal tax matters is expressly reserved for the Assistant Attorney General of the Tax Division:

- a. A request to present the same matter to a second grand jury or to the same grand jury after a no true bill has been returned;
- b. A request to recuse or disqualify a federal justice, judge or magistrate;
- c. A request to consent to a nolo contendere or *Alford* plea;
- d. A request to initiate or continue a federal prosecution affected by the Department's *Petite* Policy (dual and successive prosecution);
- e. A request for disclosure of a tax return or return information pursuant to 26 U.S.C. § 6103(h)(3)(B);
- f. A request to authorize a subpoena to, interrogation of, indictment of, or arrest of, a member of the news media;<sup>20</sup>
- g. A subpoena to an attorney for information relating to the attorney's representation of a client; and

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<sup>19</sup>Tax Division Directive 138, Delegation of Authority Relating to Criminal Tax Cases, dated July 14, 2010.

<sup>20</sup> See 28 C.F.R. § 50.10 for the policies regarding such a matter, and the principles to be taken into account in requesting an authorization, which may require the express approval of the Attorney General.

- h. A request to authorize prosecution of a person who has testified or produced information pursuant to a compulsion order for an offense or offenses first disclosed in, or closely related to, such testimony or information.<sup>21</sup>

## ***2. Delegation of Authority to the Deputy Assistant Attorney General, Criminal***

The Deputy Assistant Attorney General, Criminal ("DAAG, Criminal"), is authorized to exercise all the powers and authority of the Assistant Attorney General with respect to criminal proceedings, except those delineated in Section 1 above.

In addition, the DAAG, Criminal, shall forward to the AAG matters that are deemed appropriate for action by the AAG.

## ***3. Delegation of Authority to the Criminal Section Chiefs***

A Chief of a Criminal Section ("Chief") is authorized to act in all criminal matters arising within the jurisdiction of his or her section, except those specifically reserved for action by the AAG in Section 1 above and the following:

- a. Issuance of a search warrant when Tax Division approval is necessary (Tax Directive 52);<sup>22</sup>
- b. A matter in which the recommendations of the Section Chief and Assistant Chief as to prosecution or declination conflict;
- c. Prosecution of an attorney for criminal conduct committed in the course of acting as an attorney;
- d. A prosecution involving: (a) a local, state, federal, or foreign public official or political candidate; (b) a representative of the electronic or print news media; (c) a member of the clergy or an official of an organization deemed to be exempt under section 501(c)(3) of the Internal Revenue Code; or (d) an official of a labor union;

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<sup>21</sup> See USAM, § 9-23.400. The request for authorization to prosecute must be sent to the Assistant Attorney General, but authorization must come from the Attorney General, in writing.

<sup>22</sup> Tax Division Directive 52, The Authority to Execute Title 26 or Tax-Related Title 18 Search Warrants, revised March 17, 2008.

- e. A request to issue a compulsion order in any case over which the Tax Division has jurisdiction;
- f. Any prosecutorial decision that requires a deviation from Tax Division policy or procedure; and
- g. A request to authorize dismissal of an indictment.

In addition, a Chief shall forward to the DAAG, Criminal, all matters that involve novel substantive, evidentiary, or procedural issues, or any other sensitive matter for which review at a higher level is appropriate.

Notwithstanding the foregoing, the DAAG, Criminal, may prescribe additional matters, the actions of which are within the authority of a Chief pursuant to this section, that the DAAG, Criminal, determines requires action by the DAAG, Criminal.

#### ***4. Scope and Effect of Tax Directive 138***

- a. The delegation includes all tax and tax-related offenses delegated to the Tax Division pursuant to 28 C.F.R. §§ 0.70 and 0.179a.
- b. The delegation supersedes Tax Division Directives 44, 53, 71, 115 and all other delegations of authority to approve criminal tax or tax-related matters or cases previously issued.
- c. In the event a Chief is recused from acting on a particular matter, then the DAAG, Criminal, may select another Chief to act in that matter.
- d. When either, or both, the AAG or the DAAG, Criminal, is recused in a particular matter, a ranking Tax Division official will be authorized pursuant to 28 C.F.R. § 0.137 to act as either the Acting AAG or the Acting DAAG, Criminal, in that matter.
- e. When an individual has been duly designated a specified "Acting" official, the individual shall have the same authority as the position commands, unless that authority is specifically limited in writing by the appropriate authorizing official.

- f. The Assistant Attorney General, at any time may withdraw any authority delegated by Directive 138.

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