

Department  
of the  
Treasury

INTERNAL  
REVENUE  
SERVICE

# HANDBOOK FOR SPECIAL AGENTS

CRIMINAL INVESTIGATION  
INTELLIGENCE DIVISION  
INTERNAL REVENUE  
SERVICE

"AGENTS... Our tax system is based on individual self assessment and voluntary compliance... the material contained in this handbook is confidential in character. It must not under any circumstance be made available to persons outside the service."

MR. MORTIMER CAPLIN  
INTERNAL REVENUE SERVICE

COMMISSIONER

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## Statutory Provisions

### 210 (1-18-80) 9781 Introduction

This chapter contains the complete text of the sections of Title 18, United States Code, that may be involved in criminal investigations; the more frequently used penal and civil penalties of the Internal Revenue Code of 1954 (Title 26, United States Code); and the sections of Title 18 and the Internal Revenue Code of 1954 relating to limitations on criminal prosecution. The less frequently used penalties of the internal revenue codes and the sections concerning periods of limitation for assessment and collection of tax are set forth in outline form.

### 220 (1-18-80) 9781 Criminal Penalties Applicable to Fraud and Miscellaneous Investigations

### 221 (1-18-80) 9781 Internal Revenue Code of 1954

#### 221.1 (1-18-80) 9781 Effective Date and Application

Chapter 75 of the Internal Revenue Code of 1954, entitled Crimes, Other Offenses, and Forfeitures, is effective for offenses committed after August 16, 1954. The following penal sections of chapter 75 apply to all taxes imposed by Title 26, United States Code (Internal Revenue Code of 1954) unless the particular section states that it applies to a specific tax.

#### 221.2 (1-18-80) 9781 IRC 7201. Attempt to Evade or Defeat Tax

"Any person who willfully attempts in any manner to evade or defeat any tax imposed by this title or the payment thereof shall, in addition to other penalties provided by law, be guilty of a felony and, upon conviction thereof, shall be fined not more than \$10,000, or imprisoned not more than 5 years, or both, together with the costs of prosecution." See text 413 and IRM 9212.

#### 221.3 (1-18-80) 9781 IRC 7202. Willful Failure to Collect or Pay Over Tax

"Any person required under this title to collect, account for, and pay over any tax imposed by this title who willfully fails to collect or truthfully account for and pay over such tax shall, in addition to other penalties provided by law, be guilty of a felony and, upon conviction thereof, shall be fined not more than \$10,000, or imprisoned not more than 5 years, or both, together with the costs of prosecution." See text 414 and IRM 9212.

### 221.4 (1-18-80) 9781 IRC 7203. Willful Failure to File Return, Supply Information, or Pay Tax

"Any person required under this title to pay any estimated tax or tax, or required by this title or by regulations made under authority thereof to make a return (other than a return required under authority of section 6015), keep any records, or supply any information, who willfully fails to pay such estimated tax or tax, make such return, keep such records, or supply such information, shall, in addition to other penalties provide by law, be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than \$10,000, or imprisoned not more than 1 year, or both, together with the costs of prosecution." See text 415 and IRM 9212.

### 221.5 (1-18-80) 9781 IRC 7204. Fraudulent Statement or Failure to Make Statement to Employees

[Applies to withholding statements required of employers.]

"In lieu of any other penalty provided by law (except the penalty provided by section 6674) any person required under the provisions of section 6051 to furnish a statement who willfully furnishes a false or fraudulent statement or who willfully fails to furnish a statement in the manner, at the time, and showing the information required under section 6051, or regulations prescribed thereunder, shall, for each such offense, upon conviction thereof, be fined not more than \$1,000, or imprisoned not more than 1 year, or both." See text 416 and IRM 9212.

### 221.6 (12-7-81) 9781 IRC 7205. Fraudulent Withholding Exemption Certificate or Failure to Supply Information

"Any individual required to supply information to his employer under section 3402 who willfully supplies false or fraudulent information, or who willfully fails to supply information thereunder which would require an increase in the tax to be withheld under section 3402, shall, in lieu of any other penalty provided by law (except the penalty provided by section 6682), upon conviction thereof, be fined not more than \$500, or imprisoned not more than 1 year, or both." See text 417 and IRM 9212. The Economic Recovery Act of 1981 raised the fine from \$500 to \$1,000 for acts and failures to act after December 31, 1981.

221.7 (5-9-80)

9781

**IRC 7206. Fraud and False Statements**

"Any person who—

"(1) *Declaration Under Penalties of Perjury.*—Willfully makes and subscribes any return, statement, or other document, which contains or is verified by a written declaration that it is made under the penalties of perjury, and which he does not believe to be true and correct as to every material matter; or

"(2) *Aid or Assistance.*—Willfully aids or assists in, or procures, counsels, or advises the preparation or presentation under, or in connection with any matter arising under, the internal revenue laws, of a return, affidavit, claim, or other document, which is fraudulent or is false as to any material matter, whether or not such falsity or fraud is with the knowledge or consent of the person authorized or required to present such return, affidavit, claim, or document; or

"(3) *Fraudulent Bonds, Permits, and Entries.*—Simulates or falsely or fraudulently executes or signs any bond, permit, entry, or other document required by the provisions of the internal revenue laws, or by any regulation made in pursuance thereof, or procures the same to be falsely or fraudulently executed, or advises, aids in, or connives at such execution thereof; or

"(4) *Removal or Concealment With Intent to Defraud.*—Removes, deposits, or conceals, or is concerned in removing, depositing, or concealing, any goods or commodities for or in respect whereof any tax is or shall be imposed, or any property upon which levy is authorized by section 6331, with intent to evade or defeat the assessment or collection of any tax imposed by this title; or

"(5) *Compromises and Closing Agreements.*—In connection with any compromise under section 7122, or offer of such compromise, or in connection with any closing agreement under section 7121, or offer to enter into any such agreement, willfully—

"(A) *Concealment of Property.*—Conceals from any officer or employee of the United States any property belonging to the estate of a taxpayer or other person liable in respect of the tax, or

"(B) *Withholding, Falsifying, and Destroying Records.*—Receives, withholds, destroys, mutilates, or falsifies any book, document or record, or makes any false statement, relating to the estate or financial condition of the taxpayer or other person liable in respect of the

tax; shall be guilty of a felony and, upon conviction thereof, shall be fined not more than \$5,000, or imprisoned not more than 3 years, or both, together with the costs of prosecution." See text 418.1 and 418.2 and IRM 9212.

221.8 (5-9-80)

9781

**IRC 7207. Fraudulent Returns, Statements, or Other Documents**

"Any person who willfully delivers or discloses to the Secretary or his delegate any list, return, account, statement, or other document, known by him to be fraudulent or to be false as to any material matter, shall be fined not more than \$1,000, or imprisoned not more than 1 year, or both." See text 418.3 and IRM 9212.

221.9 (5-9-80)

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**IRC 7210. Failure to Obey Summons**

"Any person who, being duly summoned to appear to testify, or to appear and produce books, accounts, records, memoranda, or other papers, as required under sections 7602, 7603, and 7604(b), neglects to appear or to produce such books, accounts, records, memoranda, or other papers, shall, upon conviction thereof, be fined not more than \$1,000, or imprisoned not more than 1 year, or both, together with costs of prosecution." See text 36(10).4 and IRM 9212.

221.(10) (5-9-80)

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**IRC 7212. Attempts to Interfere With Administration of Internal Revenue Laws**

"(a) *Corrupt or Forcible Interference.*—Whoever corruptly or by force or threats of force (including any threatening letter or communication) endeavors to intimidate or impede any officer or employee of the United States acting in an official capacity under this title, or in any other way corruptly or by force or threats of force (including any threatening letter or communication) obstructs or impedes, or endeavors to obstruct or impede, the due administration of this title, shall, upon conviction thereof, be fined not more than \$5,000, or imprisoned not more than 3 years, or both, except that if the offense is committed only by threats of force, the person convicted thereof shall be fined not more than \$3,000, or imprisoned not more than 1 year, or both. The term "threats of force," as used in this subsection, means threats of bodily harm to the officer or employee of the United States or to a member of his family. See text 511 and IRM 9212.

“(b) *Forcible Rescue of Seized Property.*—Any person who forcibly rescues or causes to be rescued any property after it shall have been seized under this title, or shall attempt or endeavor so to do, shall, excepting in cases otherwise provided for, for every such offense, be fined not more than \$500, or not more than double the value of the property so rescued, whichever is the greater, or be imprisoned not more than 2 years.” See text 512.

**221.(11)** (1-18-80) 9781  
**Other Criminal Penalties**

See Exhibit 200-1 for a listing of other criminal penalties.

**221.(12)** (5-9-80) 9781  
**IRC 7215. Offenses With Respect to Collected Taxes**

“(a) *Penalty.*—Any person who fails to comply with any provision of section 7512(b) shall, in addition to any other penalties provided by law, be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than \$5,000, or imprisoned not more than one year; or both, together with the costs of prosecution.

“(b) *Exceptions.*—This section shall not apply—

“(1) to any person, if such person shows that there was reasonable doubt as to (A) whether the law required collection of tax, or (B) who was required by law to collect tax, and

“(2) to any person, if such person shows that the failure to comply with the provisions of section 7512(b) was due to circumstances beyond his control.

“For purposes of paragraph (2), a lack of funds existing immediately after the payment of wages (whether or not created by the payment of such wages) shall not be considered to be circumstances beyond the control of a person.” See text 414.2 and IRM 9212.

**221.(13)** (1-18-80) 9781  
**IRC 7512. Separate Accounting for Certain Collected Taxes, Etc.**

“(a) *General Rule.*—Whenever any person who is required to collect, account for, and pay over any tax imposed by subtitle C or by chapter 33—

“(1) at the time and in the manner prescribed by law or regulations (A) fails to collect, truthfully account for, or pay over such tax, or (B) fails to make deposits, payments, or returns of such tax, and

“(2) is notified, by notice delivered in hand to such person of any such failure, “then all the requirements of subsection (b) shall be complied with. In the case of a corporation, partnership, or trust notice delivered in hand to an

officer, partner, or trustee, shall, for the purposes of this section, be deemed to be notice delivered in hand to such corporation, partnership, or trust to all officers, partners, trustees, and employees thereof.

“(b) *Requirements.*—Any person who is required to collect, account for, and pay over any tax imposed by subtitle C or by chapter 33, if notice has been delivered to such person in accordance with subsection (a), shall collect the taxes imposed by subtitle C or chapter 33 which become collectible after delivery of such notice, shall (not later than the end of the second banking day after any amount of such taxes is collected) deposit such amount in a separate account in a bank (as defined in section 581), and shall keep the amount of such taxes in such account until payment over to the United States. Any such account shall be designated as a special fund in trust for the United States, payable to the United States by such person as trustee.

“(c) *Relief From Further Compliance With Subsection (b).*—Whenever the Secretary or his delegate is satisfied, with respect to any notification made under subsection (a), that all requirements of law and regulations with respect to the taxes imposed by subtitle C or chapter 33, as the case may be, will henceforth be complied with, he may cancel such notification. Such cancellation shall take effect at such time as is specified in the notice of such cancellation.”

**222** (1-18-80) 9781  
**Title 18, United States Code**

**222.1** (1-18-80) 9781  
**Introduction**

The following penal sections of Title 18 apply to violations that may be encountered in connection with Criminal Investigation Division investigations.

**222.2** (1-18-80) 9781  
**Section 2. Principals**

“(a) Whoever commits an offense against the United States, or aids, abets, counsels, commands, induces or procures its commission, is punishable as a principal.

“(b) Whoever willfully causes an act to be done, which if directly performed by him or another would be an offense against the United States, is punishable as a principal.” See IRM 9213.



**222.3** (1-18-80) 9781  
**Section 3. Accessory After the Fact**

"Whoever, knowing that an offense against the United States has been committed, receives, relieves, comforts or assists the offender in order to hinder or prevent his apprehension, trial or punishment, is an accessory after the fact.

"Except as otherwise expressly provided by any Act of Congress, an accessory after the fact shall be imprisoned not more than one-half the maximum term of imprisonment or fined not more than one-half the maximum fine prescribed for the punishment of the principal, or both; or if the principal is punishable by death, the accessory shall be imprisoned not more than ten years." See IRM 9213.

**222.4** (1-18-80) 9781  
**Section 4. Misprison of Felony**

"Whoever, having knowledge of the actual commission of a felony cognizable by a court of the United States, conceals and does not as soon as possible make known the same to some judge or other person in civil or military authority under the United States, shall be fined not more than \$500 or imprisoned not more than three years, or both." See IRM 9213.

**222.5** (1-18-80) 9781  
**Section 111. Assaulting, Resisting, or Impeding Certain Officers or Employees**

[The provisions of IRC 7212 relating to Attempts to interfere with Administration of Internal Revenue Laws are set forth in 221.(10).]

"Whoever forcibly assaults, resists, opposes, impedes, intimidates, or interferes with any person designated in section 1114 of this title while engaged in or on account of the performance of his official duties, shall be fined not more than \$5,000 or imprisoned not more than three years, or both.

"Whoever, in the commission of any such acts uses a deadly or dangerous weapon, shall be fined not more than \$10,000 or imprisoned not more than ten years, or both." See text 411.2 and IRM 9213.

**222.6** (1-18-80) 9781  
**Section 201. Offer to Officer or Other Person**

"Whoever promises, offers, or gives any money or thing of value, or makes or tenders any check, order, contract, undertaking, obligation, gratuity, or security for the payment of money or for the delivery or conveyance of

anything of value, to any officer or employee or person acting for or on behalf of the United States, or any department or agency thereof, in any official function, under or by authority of any such department or agency or to any officer or person acting for or on behalf of either House of Congress, or of any committee of either House, or both Houses thereof, with intent to influence his decision or action on any question, matter, cause, or proceeding which may at any time be pending, or which may by law be brought before him in his official capacity, or in his place of trust or profit, or with intent to influence him to commit or aid in committing, or to collude in, or allow, any fraud, or make opportunity for the commission of any fraud, on the United States, or to induce him to do or omit to do any act in violation of his lawful duty, shall be fined not more than three times the amount of such money or value of such thing or imprisoned not more than three years, or both."

"This section shall not apply to violations of section 212 of this title." (Section 212 relates to an offer or threat to a customs officer or employee.) See text 420 and IRM 9213.

**222.7** (5-9-80) 9781  
**(Reserved)**

**222.8** (1-18-80) 9781  
**Section 285. Taking or Using Papers Relating to Claims**

"Whoever, without authority, takes and carries away from the place where it was filed, deposited, or kept by authority of the United States, any certificate, affidavit, deposition, statement of facts, power of attorney, receipt, voucher, assignment, or other document, record, file, or paper prepared, fitted, or intended to be used or presented to procure the payment of money from or by the United States or any officer, employee, or agent thereof, or the allowance or payment of the whole or any part of any claim, account, or demand against the United States, whether the same has or has not already been so used or presented, and whether such claim, account, or demand, or any part thereof has or has not already been allowed or paid; or

"Whoever presents, uses, or attempts to use any such document, record, file, or paper so taken and carried away, to procure the payment of any money from or by the United States, or any officer, employee, or agent thereof, or the allowance or payment of the whole or any part of any claim, account, or demand against the United States—

"Shall be fined not more than \$5,000 or imprisoned not more than five years, or both." See IRM 9213.

**222.9** (1-18-80) 9781**Section 286. Conspiracy to Defraud the Government With Respect to Claims**

"Whoever enters into any agreement, combination, or conspiracy to defraud the United States, or any department or agency thereof, by obtaining or aiding to obtain the payment or allowance of any false, fictitious or fraudulent claim, shall be fined not more than \$10,000 or imprisoned not more than ten years, or both." See IRM 9213

**222.(10)** (1-18-80) 9781**Section 287. False, Fictitious or Fraudulent Claims**

"Whoever makes or presents to any person or officer in the civil, military, or naval service of the United States, or to any department or agency thereof, any claim upon or against the United States, or any department or agency thereof, knowing such claim to be false, fictitious, or fraudulent, shall be fined not more than \$10,000 or imprisoned not more than five years, or both." See Text 318.5 and IRM 9213.

**222.(11)** (1-18-80) 9781**Section 371. Conspiracy to Commit Offense or to Defraud United States**

"If two or more persons conspire either to commit any offense against the United States, or to defraud the United States, or any agency thereof in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy, each shall be fined not more than \$10,000 or imprisoned not more than five years, or both.

"If, however, the offense, the commission of which is the object of the conspiracy, is a misdemeanor only, the punishment for such conspiracy shall not exceed the maximum punishment provided for such misdemeanor." See Text 31(10) and IRM 9213.

**222.(12)** (1-18-80) 9781**Section 372. Conspiracy to Impede or Injure Officer**

"If two or more persons in any State, Territory, Possession, or District conspire to prevent, by force, intimidation, or threat, any person from accepting or holding any office, trust, or place of confidence under the United States, or from discharging any duties thereof, or to induce by like means any officer of the United States to

leave the place, where his duties as an officer are required to be performed, or to injure him in his person or property on account of his lawful discharge of the duties of his office, or while engaged in the lawful discharge thereof, or to injure his property so as to molest, interrupt, hinder, or impede him in the discharge of his official duties, each of such persons shall be fined not more than \$5,000 or imprisoned not more than six years, or both." See IRM 9213.

**222.(13)** (1-18-80) 9781**Section 494. Contractors' Bonds, Bids, and Public Records**

"Whoever falsely makes, alters, forges, or counterfeits any bond, bid, proposal, contract, guarantee, security, official bond, public record, affidavit, or other writing for the purpose of defrauding the United States; or

"Whoever utters or publishes as true or possesses with intent to utter or publish as true, any such false, forged, altered, or counterfeited writing, knowing the same to be false, forged, altered, or counterfeited; or

"Whoever transmits to, or presents at any office or to any officer of the United States, any such false, forged, altered or counterfeited writing, knowing the same to be false, forged, altered, or counterfeited—

"Shall be fined not more than \$1,000 or imprisoned not more than ten years, or both." See IRM 9213.

**222.(14)** (1-18-80) 9781**Section 495. Contracts, Deeds, and Powers of Attorney**

"Whoever falsely makes, alters, forges, or counterfeits any deed, power of attorney, order, certificate, receipt, contract, or other writing, for the purpose of obtaining or receiving, or of enabling any other person, either directly or indirectly, to obtain or receive from the United States or any officers or agents thereof, any sum of money; or

"Whoever utters or publishes as true any such false, forged, altered, or counterfeited writing, with intent to defraud the United States, knowing the same to be false, altered, forged, or counterfeited; or

"Whoever transmits to, or presents at any office or officer of the United States, any such writing in support of, or in relation to, any account or claim, with intent to defraud the United

States, knowing the same to be false, altered, forged, or counterfeited—

"Shall be fined not more than \$1,000 or imprisoned not more than ten years, or both." See IRM 9213.

**222.(15)** (1-18-80) 9781  
**Section 1001. Statements or Entries Generally**

"Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined not more than \$10,000 or imprisoned not more than five years, or both." See Text 318.4 and IRM 9213.

**222.(16)** (1-18-80) 9781  
**Section 1002. Possession of False Papers to Defraud United States**

"Whoever, knowingly and with intent to defraud the United States, or any agency thereof, possesses any false, altered, forged, or counterfeited writing or document for the purpose of enabling another to obtain from the United States, or from any agency, officer or agent thereof, any sum of money, shall be fined not more than \$10,000 or imprisoned not more than five years, or both." See IRM 9213.

**222.(17)** (5-9-80) 9781  
**(Reserved)**

**222.(18)** (1-18-80) 9781  
**Section 1114. Protection of Officers and Employees of the United States**

[Sections 1111 and 1112 provide the penalties for murder and manslaughter.]

"Whoever kills . . . any officer, employee or agent of the Customs or of the Internal Revenue or any person assisting him in the execution of his duties . . . while engaged in the performance of his official duties, or on account of the performance of his official duties, shall be punished as provided under sections 1111 and 1112 of this title." See IRM 9213.

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**222.(14)** MT 9781-4  
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**222.(19)** (1-18-80) 9781  
**Section 1501. Assault on Process Server**

"Whoever knowingly and willfully obstructs, resists, or opposes any officer of the United States, or other person duly authorized, in serving, or attempting to serve or execute, any legal or judicial writ or process of any court of the United States, or United States magistrate; or

"Whoever assaults, beats, or wounds any officer or other person duly authorized, knowing him to be such officer, or other person so duly authorized, in serving or executing any such writ, rule, order, process, warrant, or other legal or judicial writ or process—

"Shall except as otherwise provided by law, be fined not more than \$300 or imprisoned not more than one year, or both." See Text 411.5 and IRM 9213.

**222.(20)** (1-18-80) 9781  
**Section 1503. Influencing or Injuring Officer, Juror or Witness Generally**

"Whoever corruptly, or by threats of force, or by any threatening letter or communication, endeavors to influence, intimidate, or impede any witness, in any court of the United States or before any United States magistrate or other committing magistrate, or any grand or petit juror, or officer in or of any court of the United States, or officer who may be serving at any examination or other proceeding before any United States magistrate or other committing magistrate, in the discharge of his duty, or injures any party or witness in his person or property on account of his attending or having attended such court or examination before such officer, magistrate, or other committing magistrate, or on account of his testifying or having testified to any matter pending therein, or injures any such grand or petit juror in his person or property on account of any verdict or indictment assented to by him, or on account of his being or having been such juror, or injures any such officer, magistrate, or other committing magistrate in his person or property on account of the performance of his official duties, or corruptly or by threats or force, or by any threatening letter or communication, influences, obstructs, or impedes, or endeavors to influence, obstruct, or impede, the due administration of justice, shall not be fined more than \$5,000 or imprisoned not more than five years, or both."

**222.(21)** (1-18-80)

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**Section 1510. Obstruction of Criminal Investigations**

“(a) Whoever willfully endeavors by means of bribery, misrepresentation, intimidation, or force or threats thereof to obstruct, delay, or prevent the communication of information relating to a violation of any person to a criminal investigator; or

“Whoever injures any person in his person or property on account of giving by such person or by any other person of any such information to any criminal investigator—

“Shall be fined not more than \$5,000 or imprisoned not more than five years, or both.

“(b) As used in this section, the term ‘criminal investigator’ means any individual duly authorized by a department, agency, or armed force of the United States to conduct or engage in investigations of or prosecutions for violations of the criminal laws of the United States.” See Text 411.6.

information, including any book, paper, document, record, recording, or other material, knowing the same to contain any false material declaration, shall be fined not more than \$10,000 or imprisoned not more than five years, or both.

“(b) This section is applicable whether the conduct occurred within or without the United States.

“(c) An indictment or information for violation of this section alleging that, in any proceedings before or ancillary to any court or grand jury of the United States, the defendant under oath has knowingly made two or more declarations, which are inconsistent to the degree that one of them is necessarily false, need not specify which declaration is false if—

“(1) each declaration was material to the point in question, and

“(2) each declaration was made within the period of the statute of limitations for the offense charged under this section.

**222.(22)** (1-18-80)

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**Section 1621. Perjury Generally**

“Whoever, having taken an oath before a competent tribunal, officer, or person, in any case in which a law of the United States authorizes an oath to be administered, that he will testify, declare, depose, or certify truly, or that any written testimony, declaration, deposition, or certificate by him subscribed, is true, willfully and contrary to such oath states or subscribes any material matter which he does not believe to be true, is guilty of perjury, and shall, except as otherwise expressly provided by law, be fined not more than \$2,000 or imprisoned not more than five years, or both.” See IRM 9213.

“In any prosecution under this section, the falsity of a declaration set forth in the indictment or information shall be established sufficient for conviction by proof that the defendant while under oath made irreconcilably contradictory declarations material to the point in question in any proceeding before or ancillary to any court or grand jury. It shall be a defense to an indictment or information made pursuant to the first sentence of this subsection that the defendant at the time he made each declaration believed the declaration was true.

“(d) Where, in the same continuous court or grand jury proceeding in which a declaration is made, the person making the declaration admits such declaration to be false, such admission shall bar prosecution under this section if, at the time the admission is made, the declaration has not substantially affected the proceeding, or it has not become manifest that such falsity has been or will be exposed.

**222.(23)** (1-18-80)

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**Section 1622. Subornation of Perjury**

“Whoever procures another to commit any perjury is guilty of subornation of perjury, and shall be fined not more than \$2,000 or imprisoned not more than five years, or both.” See IRM 9213.

“(e) Proof beyond a reasonable doubt under this section is sufficient for conviction. It shall not be necessary that such proof be made by any particular number of witnesses or by documentary or other type of evidence.” See IRM 9213.

**222.(24)** (1-18-80)

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**Section 1623. False Declarations Before Grand Jury or Court**

“(a) Whoever under oath in any proceeding before or ancillary to any court or grand jury of the United States knowingly makes any false material declaration or makes or uses any other

**222.(25)** (5-9-80)

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**(Reserved)**

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**222.(25)**

IR Manual

**222.(26)** (5-9-80) 9781  
**(Reserved)**

**222.(27)** (1-18-80) 9781  
**Section 1955. Prohibition of Illegal Gambling Businesses**

“(a) Whoever conducts, finances, manages, supervises, directs, or owns all or part of an illegal gambling business shall be fined not more than \$20,000 or imprisoned not more than five years, or both.

“(b) As used in this section—

“(1) ‘illegal gambling business’ means a gambling business which—

“(i) is a violation of the law of a State or political subdivision in which it is conducted;

“(ii) involves five or more persons who conduct, finance, manage, supervise, direct, or own all or part of such business; and

“(iii) has been or remains in substantially continuous operation for a period in excess of thirty days or has a gross revenue of \$2,000 in any single day.

“(2) ‘gambling’ includes but is not limited to pool-selling, bookmaking, maintaining slot machines, roulette wheels or dice tables, and conducting lotteries, policy, bolita or numbers games, or selling chances therein.

“(3) ‘State’ means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States.

“(c) If five or more persons conduct, finance, manage, supervise, direct, or own all or part of a gambling business and such business operates for two or more successive days, then, for the purpose of obtaining warrants for arrests, interceptions, and other searches and seizures, probable cause that the business receives gross revenue in excess of \$2,000 in any single day shall be deemed to have been established.”

**222.(28)** (1-18-80) 9781  
**Section 1962. Prohibited Activities of Racketeer Influenced and Corrupt Organizations**

“(a) It shall be unlawful for any person who has received any income derived, directly or indirectly, from a pattern of racketeering activity or through collection of an unlawful debt in which such person has participated as a principal within the meaning of section 2, title 18,

**222.(26)** MT 9781-4

United States Code, to use or invest, directly or indirectly, any part of such income, or the proceeds of such income, in acquisition of any interest in, or the establishment or operation of, any enterprise which is engaged in, or the activities of which affect, interstate or foreign commerce. A purchase of securities on the open market for purposes of investment, and without the intention of controlling or participating in the control of the issuer, or of assisting another to do so, shall not be unlawful under this subsection if the securities of the issuer held by the purchaser, the members of his immediate family, and his or their accomplices in any pattern or racketeering activity or the collection of an unlawful debt after such purchase do not amount in the aggregate to one percent of the outstanding securities of any one class, and do not confer, either in law or in fact, the power to elect one or more directors of the issuer.

“(b) It shall be unlawful for any person through a pattern of racketeering activity or through collection of an unlawful debt to acquire or maintain, directly or indirectly, any interest in or control of any enterprise which is engaged in, or the activities of which affect, interstate or foreign commerce.

“(c) It shall be unlawful for any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise’s affairs through a pattern of racketeering activity or collection of unlawful debt.

“(d) It shall be unlawful for any person to conspire to violate any of the provisions of subsections (a), (b), or (c) of this section.

**222.(29)** (1-18-80) 9781  
**Section 1963. Criminal Penalties for Racketeer Influenced and Corrupt Organizations**

“(a) Whoever violates any provision of section 1962 of this chapter shall be fined not more than \$25,000 or imprisoned not more than twenty years, or both, and shall forfeit to the United States (1) any interest he has acquired or maintained in violation of section 1962, and (2) any interest in, security of, claim against, or property or contractual right of any kind affording a source of influence over, any enterprise which he has established, operated, controlled, conducted, or participated in the conduct of, in violation of section 1962.

“(b) In any action brought by the United States under this section, the district courts of the United States shall have jurisdiction to enter such restraining orders or prohibitions, or to take such other actions, including, but not limited to, the acceptance of satisfactory performance bonds, in connection with any property or other interest subject to forfeiture under this section, as it shall deem proper.

“(c) Upon conviction of a person under this section, the court shall authorize the Attorney General to seize all property or other interest declared forfeited under this section upon such terms and conditions as the court shall deem proper. If a property right or other interest is not exercisable or transferable for value by the United States, it shall expire, and shall not revert to the convicted person. All provisions of law relating to the disposition of property, or the proceeds from the sale thereof, or the remission or mitigation of forfeitures for violation of the customs laws, and compromise of claims and the award of compensation to informers in respect of such forfeitures shall apply to forfeitures incurred, or alleged to have been incurred, under the provisions of this section insofar as applicable and not inconsistent with the provisions thereof. Such duties as are imposed upon the collector of customs or any other person with respect to the disposition of property under the customs laws shall be performed under this chapter by the Attorney General. The United States shall dispose of all such property as soon as commercially feasible, making due provision for the rights of innocent persons.”

**222.(30)** (1-18-80)

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**Section 2071. Concealment,  
Removal or Mutilation Generally**

“(a) Whoever willfully and unlawfully conceals, removes, mutilates, obliterates, or destroys, or attempts to do so, or, with intent to do so takes and carries away any record, proceeding, map, book, paper, document, or other thing, filed or deposited with any clerk or officer of any court of the United States, or in any public office, or with any judicial or public officer of the United States, shall be fined not more than \$2,000 or imprisoned not more than three years, or both.

“(b) Whoever, having the custody of any such record, proceeding, map, book, document, paper, or other thing, willfully and unlawfully conceals, removes, mutilates, obliterates, falsifies, or destroys the same, shall be fined not more than \$2,000 or imprisoned not more than three years, or both; and shall forfeit his office and be disqualified from holding any office under the United States.” See IRM 9213.

**222.(31)** (1-18-80)

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**Section 2231. Assault or  
Resistance**

“(a) Whoever forcibly assaults, resists, opposes, prevents, impedes, intimidates, or interferes with any person authorized to serve or execute search warrants or to make searches and seizures while engaged in the performance of his duties with regard hereto or on account of the performance of such duties, shall be fined not more than \$5,000 or imprisoned not more than three years, or both; and—

“(b) Whoever, in committing any act in violation of this section, uses any deadly or dangerous weapon, shall be fined not more than \$10,000 or imprisoned not more than ten years, or both.” See IRM 9213.

**222.(32)** (1-18-80) 9781  
**Section 2232. Destruction or Removal of Property to Prevent Seizure**

“Whoever, before, during, or after seizure of any property by any person authorized to make searches and seizures, in order to prevent the seizure or securing of any goods, wares, or merchandise by such person, staves, breaks, throws overboard, destroys, or removes the same, shall be fined not more than \$2,000 or imprisoned not more than one year, or both.” See IRM 9213.

**222.(33)** (1-18-80) 9781  
**Section 2233. Rescue of Seized Property**

“Whoever forcibly rescues, dispossesses, or attempts to rescue or dispossess any property, articles, or objects after the same shall have been taken, detained, or seized by any officer or other person under the authority of any revenue law of the United States, or by any person authorized to make searches and seizures, shall be fined not more than \$2,000 or imprisoned not more than two years, or both.” See Text 412.12 and IRM 9213.

**222.(34)** (1-18-80) 9781  
**Section 641. Public Money, Property or Records**

“Whoever embezzles, steals, purloins, or knowingly converts to his use or the use of another, or without authority, sells, conveys or disposes of any record, voucher, money, or thing of value of the United States or of any department or agency thereof, or any property made or being made under contract for the United States or any department or agency thereof; or

“Whoever receives, conceals, or retains the same with intent to convert it to his use or gain, knowing it to have been embezzled, stolen, purloined or converted—

“Shall be fined not more than \$10,000 or imprisoned not more than ten years, or both; but if the value of such property does not exceed the sum of \$100, he shall be fined not more than

\$1,000 or imprisoned not more than one year, or both.”

**230** (1-18-80) 9781  
**(Reserved)**

**240** (1-18-80) 9781  
**Periods of Limitation on Criminal Prosecution**

**241** (1-18-80) 9781  
**IRC 6531. Periods of Limitation**

“No person shall be prosecuted, tried, or punished for any of the various offenses arising under the internal revenue laws unless the indictment is found or the information instituted within 3 years next after the commission of the offense, except that the period of limitation shall be 6 years—

“(1) for offenses involving the defrauding or attempting to defraud the United States or any agency thereof, whether by conspiracy or not, and in any manner;

“(2) for the offense of willfully attempting in any manner to evade or defeat any tax or the payment thereof;

“(3) for the offense of willfully aiding or assisting in, or procuring, counseling, or advising, the preparation or presentation under or in connection with any matter arising under, the internal revenue laws, of a false or fraudulent return, affidavit, claim, or document (whether or not such falsity or fraud is with the knowledge or consent of the person authorized or required to present such return, affidavit, claim, or document);

“(4) for the offense of willfully failing to pay any tax, or make any return (other than a return required under authority of part III subchapter A of chapter 61) at the time or times required by law or regulations;

“(5) for offenses described in sections 7206(1) and 7207 (relating to false statements and fraudulent documents);

“(6) for the offense described in section 7212(a) (relating to intimidation of officers and employees of the United States);

“(7) for offenses described in section 7214(a) committed by officers and employees of the United States; and

“(8) for offenses arising under section 371 of Title 18 of the United State Code, where the object of the conspiracy is to attempt in any

manner to evade or defeat any tax or the payment thereof.

“The time during which the person committing any of the various offenses arising under the internal revenue laws is outside the United States or is a fugitive from justice within the meaning of section 3290 of Title 18 of the United States Code, shall not be taken as any part of the time limited by law for the commencement of such proceedings. (The preceding sentence shall also be deemed an amendment to section 3748(a) of the Internal Revenue Code of 1939, and shall apply in lieu of the sentence in section 3748(a) which relates to the time during which a person committing an offense is absent from the district wherein the same is committed, except that such amendment shall apply only if the period of limitations under section 3748 would, without the application of such amendment, expire more than 3 years after the date of enactment of this title, and except that such period shall not, with the application of this amendment, expire prior to the date which is 3 years after the date of enactment of this title.) Where a complaint is instituted before a magistrate of the United States within the period above limited, the time shall be extended until the date which is 9 months after the date of the making of the complaint before the magistrate of the United States. For the purpose of determining the periods of limitation on criminal prosecutions, the rules of section 6513 shall be applicable.”

**242** (1-18-80)  
**IRC 6513. Time Return Deemed Filed and Tax Considered Paid**

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“(a) *Early Return or Advance Payment of Tax.*—For purposes of section 6511, any return filed before the last day prescribed for the filing thereof shall be considered as filed on such last day. For purposes of section 6511(b)(2) and (c) and section 6512, payment of any portion of the tax made before the last day prescribed for the payment of the tax shall be considered made on such last day. For purposes of this subsection, the last day prescribed for filing the return or paying the tax shall be determined without regard to any extension of time granted the taxpayer and without regard to any election to pay the tax in installments.

“(b) *Prepaid Income Tax.*—For purposes of section 6511 or 6512, any tax actually deducted and withheld at the source during any calendar

year under chapter 24 shall, in respect of the recipient of the income, be deemed to have been paid by him on the 15th day of the fourth month following the close of his taxable year with respect to which such tax is allowable as a credit under section 31. For purposes of section 6511 and 6512, any amount paid as estimated income tax for any taxable year shall be deemed to have been paid on the last day prescribed for filing the return under section 6012 for such taxable year (determined without regard to any extension of time for filing such return).

“(c) *Return and Payment of Social Security Taxes and Income Tax Withholding.*—Notwithstanding subsection (a), for purposes of section 6511 with respect to any tax imposed by chapter 21 or 24—

“(1) If a return for any period ending with or within a calendar year is filed before April 15 of the succeeding calendar year, such return shall be considered filed on April 15 of such succeeding calendar year; and

“(2) If a tax with respect to remuneration paid during any period ending with or within a calendar year is paid before April 15 of the succeeding calendar year, such tax shall be considered paid on April 15 of such succeeding calendar year.

“(d) *Overpayment of Income Tax Credited to Estimated Tax.*—If any overpayment of income tax is, in accordance with section 6402(b), claimed as a credit against estimated tax for the succeeding taxable year, such amount shall be considered as a payment of the income tax for the succeeding taxable year (whether or not claimed as a credit in the return of estimated tax for such succeeding taxable year), and no claim or refund of such overpayment shall be allowed for the taxable year in which the overpayment arises.”

**243** (1-18-80)  
**Title 18, United States Code—  
General Statute of Limitations—  
Section 3282. Offenses Not  
Capital**

9781

“Except as otherwise expressly provided by law, no person shall be prosecuted, tried, or punished for any offense, not capital, unless the indictment is found or the information is instituted within five years next after such offense shall have been committed. (June 25, 1948, ch. 645, Sec. 1, 62 Stat. 828 and September 1, 1954, ch. 1214, 2d. session, 68 Stat. 1142.)”



**244** (1-18-80) 9781  
**Title 18, United States Code—  
 Fugitives From Justice**

**244.1** (1-18-80) 9781  
**Section 3290. Fugitives From  
 Justice**

"No statute of limitations shall extend to any person fleeing from justice."

**244.2** (1-18-80) 9781  
**Section 1073. Flight to Avoid  
 Prosecution or Giving Testimony**

"Whoever moves or travels in interstate or foreign commerce with intent either (1) to avoid prosecution, or custody or confinement after conviction, under the laws of the place from which he flees, for a crime, or an attempt to commit a crime, punishable by death or which is a felony under the laws of the place from which the fugitive flees, or which, in the case of New Jersey, is a high misdemeanor under the laws of said States, or (2) to avoid giving testimony in any criminal proceedings in such place in which the commission of an offense punishable by death or which is a felony under the laws of such place, or which in the case of New Jersey, is a high misdemeanor under the laws of said State, is charged, shall be fined not more than \$5,000 or imprisoned not more than five years, or both.

"Violations of this section may be prosecuted only in the Federal judicial district in which the original crime was alleged to have been committed, or in which the person was held in custody or confinement and only upon formal approval in writing by the Attorney General or an Assistant Attorney General of the United States, which function of approving prosecutions may not be delegated."

**250** (1-18-80) 9781  
**Civil Penalties Applicable to Fraud  
 and Miscellaneous Investigations**

**251** (1-18-80) 9781  
**Introduction**

The complete texts of the civil penalty sections relating to income and miscellaneous taxes are set forth herein.

**252** (1-18-80) 9781  
**Internal Revenue Code of 1954,  
 As Amended By Tax Reform Act  
 of 1969**

**252.1** (1-18-80) 9781  
**IRC 6651. Failure to File Tax  
 Return or to Pay Tax**

"(a) *Addition to the Tax.*—In case of failure—

"(1) to file any return required under authority of subchapter A of chapter 61 (other than part III thereof), subchapter A of chapter 51 (relating to distilled spirits, wines, and beer), or of subchapter A of chapter 52 (relating to tobacco, cigars, cigarettes, and cigarette papers and tubes), or of subchapter A of chapter 53 (relating to machine guns and certain other firearms), on the date prescribed therefor (determined with regard to any extension of time for filing), unless it is shown that such failure is due to reasonable cause and not due to willful neglect, there shall be added to the amount required to be shown as tax on such return 5 percent of the amount of such tax if the failure is for not more than 1 month, with an additional 5 percent for each additional month or fraction thereof during which such failure continues, not exceeding 25 percent in the aggregate;

"(2) to pay the amount shown as tax on any return specified in paragraph (1) on or before the date prescribed for payment of such tax (determined with regard to any extension of time for payment), unless it is shown that such failure is due to reasonable cause and not due to willful neglect, there shall be added to the amount shown as tax on such return 0.5 percent of the amount of such tax if the failure is not for more than 1 month, with an additional 0.5 percent for each additional month or fraction thereof during which such failure continues, not exceeding 25 percent in the aggregate; or

"(3) to pay any amount in respect of any tax required to be shown on a return specified in paragraph (1) which is not so shown (including an assessment made pursuant to section 6213(b)) within 10 days of the date of the notice and demand therefor, unless it is shown that such failure is due to reasonable cause and not due to willful neglect, there shall be added to the amount of tax stated in such notice and demand 0.5 percent of the amount of such tax if the failure is for not more than 1 month, with an additional 0.5 percent for each additional month or fraction thereof during which such failure continues, not exceeding 25 percent in the aggregate.

"(b) *Penalty Imposed on Net Amount Due.*—For purposes of—

“(1) subsection (a)(1), the amount of tax required to be shown on the return shall be reduced by the amount of any part of the tax which is paid on or before the date prescribed for payment of the tax and by the amount of any credit against the tax which may be claimed on the return,

“(2) subsection (a)(2), the amount of tax shown on the return shall, for purposes of computing the addition for any month, be reduced by the amount of any part of the tax which is paid on or before the beginning of such month and by the amount of any credit against the tax which may be claimed on the return, and

“(3) subsection (a)(3), the amount of tax stated in the notice and demand shall, for the purpose of computing the addition for any month, be reduced by the amount of any part of the tax which is paid before the beginning of such month.

“(c) *Limitations and Special Rule.*—

“(1) *Additions under more than one paragraph.*—

“(A) With respect to any return, the amount of the addition under paragraph (1) of subsection (a) shall be reduced by the amount of the addition under paragraph (2) of subsection (a) for any month to which an addition to tax applies under both paragraphs(1) and (2).

“(B) With respect to any return, the maximum amount of the addition permitted under paragraph (3) of subsection (a) shall be reduced by the amount of the addition under paragraph (1) of subsection (a) which is attributable to the tax for which the notice and demand is made and which is not paid within 10 days of notice and demand.

“(2) *Amount of tax shown more than amount required to be shown.*—If the amount required to be shown as tax on a return is less than the amount shown as tax on such return, subsections (a)(2) and (b)(2) shall be applied by substituting such lower amount.

“(D) *Exception for Declarations of Estimated Tax.*—This section shall not apply to any failure to file a declaration of estimated tax required by section 6015 or to pay any estimated tax required to be paid by section 6153 or 6154.”

### **252.2** (1-18-80)

9781

#### **IRC 6652. Failure to File Certain Information Returns**

“(a) *Additional Amount.*—In case of each failure to file a statement of a payment to another

person, required under authority of section 6041 (relating to information at source), section 6042 (relating to payments of corporate dividends), section 6044 (relating to patronage dividends), section 6045 (relating to returns of brokers), or section 6051(d) (relating to information returns with respect to income tax withheld), unless it is shown that such failure is due to reasonable cause and not to willful neglect, there shall be paid by the person failing to file the statement, upon notice and demand by the Secretary or his delegate and in the same manner as tax, \$1 for each such statement not filed, but the total amount imposed on the delinquent person for all such failures during any calendar year shall not exceed \$1,000.”

### **252.3** (1-18-80)

9781

#### **IRC 6653. Failure to Pay Tax**

“(a) *Negligence or Intentional Disregard of Rules and Regulations With Respect to Income or Gift Taxes.*—If any part of any underpayment (as defined in subsection (c)(1) of any tax imposed by subtitle A or by chapter 12 of subtitle B (relating to income taxes and gift taxes) is due to negligence or intentional disregard of rules and regulations (but without intent to defraud), there shall be added to the tax an amount equal to 5 percent of the underpayment.

“(b) *Fraud.*—If any part of any underpayment (as defined in subsection (c)) of tax required to be shown on a return is due to fraud, there shall be added to the tax an amount equal to 50 percent of the underpayment. In the case of income taxes and gift taxes, this amount shall be in lieu of any amount determined under subsection (a).

“(c) *Definition of Underpayment.*—For purposes of this section, the term ‘underpayment’ means—

“(1) *Income, Estate, Gift and Chapter 42 Taxes.*—In the case of a tax to which Section 6211 (relating to income, estate, gift and chapter 42 taxes) is applicable, a deficiency as defined in that section (except that, for this purpose, the tax shown on a return referred to in section 6211(a)(1)(A) shall be taken into account only if such return was filed on or before the last day prescribed for the filing of such return, determined with regard to any extension of time for such filing), and

“(2) *Other Taxes*.—In the case of any other tax, the amount by which such tax imposed by this title exceeds the excess of—

“(A) The sum of—

“(i) The amount shown as the tax by the taxpayer upon his return (determined without regard to any credit for an overpayment for any prior period, and without regard to any adjustment under authority of sections 6205(a) and 6413(a)), if a return was made by the taxpayer within the time prescribed for filing such return (determined with regard to any extension of time for such filing) and an amount shown as the tax by the taxpayer thereon, plus

“(ii) Any amount, now shown on the return, paid in respect of such tax over—

“(B) The amount of rebates made.

“For purposes of subparagraph (B), the term ‘rebate’ means so much of an abatement, credit, refund, or other repayment, as was made on the ground that the tax imposed was less than the excess of the amount specified in subparagraph (A) over the rebates previously made.

“(D) *No Delinquency Penalty if Fraud Assessed*.—If any penalty is assessed under subsection (b) (relating to fraud) for an underpayment of tax which is required to be shown on a return, no penalty under section 6651 (relating to failure to file such return or pay tax) shall be assessed with respect to the same underpayment.

“(e) *Failure to Pay Stamp Tax*.—Any person (as defined in section 6671(b)) who willfully fails to pay any tax imposed by this title which is payable by stamp, coupons, tickets, books, or other devices or methods prescribed by this title or by regulations under authority of this title, or willfully attempts in any manner to evade or defeat any such tax or the payment thereof, shall, in addition to other penalties provided by law, be liable to a penalty of 50 percent of the total amount of the underpayment of the tax.”

**252.4** (1-18-80)

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### IRC 6211. Definition of a Deficiency

“(a) *In General*.—For purposes of this title in the case of income, estate, gift, and excise

taxes, imposed by subtitles A and B, and chapter 42, the term ‘deficiency’ means the amount by which the tax imposed by subtitle A or B or chapter 42 exceeds the excess of—

“(1) the sum of

“(A) the amount shown as the tax by the taxpayer upon his return, if a return was made by the taxpayer and an amount was shown as the tax by the taxpayer thereon, plus

“(B) the amounts previously assessed (or collected without assessment) as a deficiency, over—

“(2) the amount of rebates, as defined in subsection (b)(2), made.

“(b) *Rules for Application of Subsection (a)*.—For purposes of this section—

“(1) The tax imposed by chapter 1 and the tax shown on the return shall both be determined without regard to payments on account of estimated tax, without regard to the credit under section 31, and without regard to so much of the credit under section 32 as exceeds 2 percent of the interest on obligations described in section 1451.

“(2) The term ‘rebate’ means so much of an abatement, credit, refund, or other repayment, as was made on the ground that the imposed by subtitle A or B or chapter 42 was less than the excess of the amount specified in subsection (a)(1) over the rebates previously made.

“(3) The computation by the Secretary or his delegate, pursuant to section 6014, of the tax imposed by chapter 1 shall be considered as having been made by the taxpayer and the tax so computed considered as shown by the taxpayer upon his return.

**252.5** (1-18-80)

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### Other Civil Penalties

See Exhibit 200-2 for a listing of other civil penalties.

**Exhibit 200-1****Other Criminal Penalties****Handbook Reference: 221.(11)**

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<i>Section</i>	<i>Description of offense</i>	<i>Maximum penalty</i>
7208	Offenses relating to stamps— (1) Counterfeiting. (2) Mutilation or removal. (3) Use of mutilated, insufficient, or counterfeited stamps. (4) Reuse of stamps. (5) Disposal and receipt of emptied stamped packages.	\$10,000, 5 yrs.
7209	Unauthorized use or sale of stamps.	\$1,000, 6 months.
7211	False statements to purchasers or lessees relating to tax.	\$1,000, 1 yr.
7231	Failure to obtain license for collection of foreign items.	\$5,000, 1 yr.
7232	Failure to register or give bond, or false statement by manufacturers or producer of gasoline or lubricating oil.	\$5,000, 5 yrs.
7233	Failure to pay, or attempt to evade payment of, tax on cotton futures, and other violations.	\$20,000, 3 yrs.
7241	Failure to furnish certain information regarding windfall profit tax on domestic crude oil	\$10,000, 1 yr.
7261	Representation that retailers' excise tax is excluded from price of article.	\$1,000 fine.
7270	Failure to affix stamps on foreign insurance policies with intent to evade.	Double amount of tax (fine).

**Exhibit 200-2****Other Civil Penalties****Handbook Reference: 252.5**

<i>Section</i>	<i>Description of offense</i>	<i>Penalty</i>
6656	Failure to make deposit of taxes.	5% of the amount of the under payment.
6657	Bad checks tendered not in good faith	1% of amount of check; Minimum: \$5 or amount of check.
6672	Failure to collect and pay over tax, or attempt to evade or defeat a collected tax.	Total amount of tax evaded, not collected, or not accounted for and paid over.
6674	Willfully furnishing fraudulent withholding statement or failing to furnish statement to employee.	\$50.
6675	Making an excessive claim with respect to the use of gasoline or lubricating oil.	Equal to double the excessive amount claimed.
6676	Failure to supply identifying numbers on returns, statements, or documents, or to other persons, as required.	\$5 for each failure.
6677(a)	Failure to file a return required under Section 6048, I.R.C. (transfers to foreign trusts) or failure to report information required on such return.	5% of the amount transferred, not to exceed \$1,000.
6678	Failure to furnish statements to recipients of certain items of income (dividends, interest, certain wage payments, etc.).	\$10, each failure.
6679	Failure to file a required return, or to show required information, relating to organization of, or acquisition of stock of, a foreign corporation.	\$1,000.
6682	Supplying false information with respect to itemized deductions for withholding tax allowance purposes	\$50. (\$500, after 12/31/81)
7265(b)	Oleomargarine or adulterated butter—purchasing when not properly branded or stamped.	\$50.
7268	Possession of goods on which taxes are imposed with intent by possessor to sell in fraud of law or to evade tax.	\$500, or not less than double the amount of taxes fraudulently attempted to be evaded.
7269	Failure to produce records or property relating to estate tax.	Not exceeding \$500.
7271	Penalties relating to stamps—failure to attach or cancel; making, selling, issuing articles or documents without payment of full amount of tax, etc.	\$50.
7272	Failure to register.	\$50.
7273	Failure to post stamps (not including wagering tax stamp). Not willful.	Equal to special tax but not less than \$10.
7304	Willful Fraudulently claiming drawback on goods on which no tax was paid, or claiming greater amount than tax paid.	Double above penalty. \$500, or triple amount of drawback claimed.
31USC231	Liability of persons making false claims	\$2,000 forfeiture for each claim plus double the amount paid out by the United States.

# General Investigative Procedure

**310** (1-18-80)

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## Criminal Investigation Programs

**311** (5-9-80)

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### General

#### (1) General Enforcement Program

(a) This program encompasses all criminal enforcement activities of the Criminal Investigation Division except those included in the special enforcement program. The identification and investigation of income tax evasion cases of substance with prosecution potential is a primary objective. The program also provides for balanced coverage as to types of violations, as well as geographic locations and economic and vocational status of violators as considered necessary to stimulate voluntary compliance. (IRM 9152)

(b) The highest priority of the Criminal Investigation Division is to create maximum positive impact on the compliance attitudes and practices of taxpayers through an effective General Enforcement Program (GEP). Within the GEP Program, priority will be given to high impact coordinated compliance projects. (IRM 9161.1)

#### (2) Special Enforcement Program

(a) This program encompasses the identification and investigation of that segment of the public who derive substantial income from illegal activities and violate the tax laws or other related statutes in contravention of the Internal Revenue laws. The very nature of their operations requires national coordination of enforcement efforts, close cooperation and liaison with the Department of Justice and other Federal, State and local law enforcement agencies. (See IRM 9400 and IRM 9153).

(b) Criminal Investigation, through the Special Enforcement Program, will continue to participate actively in the Federal effort against persons who derive substantial income from illegal activities and violate the tax laws. (IRM 9161.2)

**312** (1-18-80)

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### Definitions (IRM 9390)

(1) A "case" is an accumulation of facts concerning a taxpayer, which are segregated and associated with the taxpayer's name and evaluated for potential assignment to an employee for appropriate action.

(2) An "assigned case" is a case that has been assigned to an employee or group of employees for action, and that is subject to a requirement for a written report or an entry in a log indicating the action taken when the assigned case is completed.

(3) A "case file" is the accumulated notes, documentation and information assembled as a result of Service inquiries of and about a taxpayer which contains the taxpayer's name

or identifying number or symbol assigned to the taxpayer.

(4) An "informant's communication" is a communication from anyone outside the Service, written or oral, voluntarily submitted to the Service, identifying one or more taxpayers and providing some information about the taxpayer. The informant may be anonymous.

(5) A "project" is a study, survey or canvassing activity involving a limited number of taxpayers within such categories as an occupation, an industry, a geographic area or those involved in a specific economic activity, undertaken to identify noncompliance with the tax laws.

(6) An "intelligence gathering assignment" is an approved assignment made for the purpose of gathering tax related information concerning a specific individual or entity.

(7) An investigation is the gathering of pertinent evidence to prove or disprove the existence of a violation of the law or regulations within Criminal Investigation Jurisdiction.

**313** (5-9-80)

9781

### Planning (Generally)

(1) The purpose of a special agent's investigation is to obtain facts and evidence. His/her primary aim is to determine whether the person under investigation has committed a criminal violation, and, if the facts disclose violations subject to criminal or civil penalties within the jurisdiction of the Criminal Investigation Division, to obtain whatever evidence is required to sustain criminal proceedings or the assertion of civil penalties.

(2) The special agent should first determine what he/she is attempting to prove. This involves an evaluation and analysis of the allegation to ascertain whether the available facts indicate a violation within Criminal Investigation Division jurisdiction and what evidence must be obtained to establish the elements of the crime. A work chart or other plan of procedure may then be developed. This essentially involves a determination of listing of information and evidence required and the probable source thereof. Planning for fraud investigations is discussed in 3(10)8. See also IRM 9381 and 9382.

(3) All criminal investigations should be commenced and concluded as expeditiously as possible. They should be conducted impartially and thoroughly to obtain all pertinent information and evidence. Duplication in investigations, unnecessary inconveniences to the public and unnecessary embarrassment to the taxpayer should be avoided. Appropriate courtesy should be shown when soliciting information.

(4) Investigations should be terminated when sufficient evidence to convict has been accumulated and there are no reasonable grounds to expect that further investigation may

produce significant results in relation to the available evidence and to the additional investigative time and effort involved. The special agent will seek out all who are implicated in the crime and obtain definitive evidence as to their implication, to the extent reasonable. Investigations with less prosecution potential should be closed when there are insufficient resources in the foreseeable future for completing them and there are others of greater potential for development as substantial or flagrant criminal violations or having a greater deterrent potential.

**320** (1-18-80) 9781  
**Knowledge of Law and Evidence**

**321** (5-9-80) 9781  
**References**

Planning and conducting investigations involves the application of knowledge of the criminal and tax laws contained in the Internal Revenue Code (Title 26, United States Code) and the Criminal Code (Title 18, United States Code), together with a working knowledge of the fundamental rules of evidence. Handbook text 322 and 323 concern general information relative to law and evidence. Specific laws encountered in Criminal Investigation Division investigations are set forth in Chapter 200. Trial procedure is discussed in Handbook Chapter 700, and the sections of the Handbook concerning particular investigative devices, techniques, and procedures, such as interviewing witnesses and obtaining documentary evidence, include information regarding related rules of evidence.

**322** (1-18-80) 9781  
**Law**

**322.1** (1-18-80) 9781  
**Definitions of Law**

(1) Laws are rules of conduct which are prescribed or formally recognized as binding, and are enforced by the governing power.

(2) *Common and Statutory Law*

(a) Common law comprises the body of principles and rules of action relating to government and security of persons and property which derive their authority solely from usages and customs or from judgments and decrees of courts recognizing, affirming, and enforcing such usages and customs.

(b) Statutory law refers to laws enacted and established by a legislative body. All Federal crimes are statutory but common law is frequently resorted to for defining words used in the statutes. For example, statutes provide

penalties for attempted evasion of income tax but they do not define the terms "attempt" and "evasion."

(3) *Substantive and Adjective Law*—Substantive law creates, defines, and regulates rights, duties, responsibilities, and obligations, whereas adjective or remedial law provides rules for enforcing rights or obtaining redress for their invasion. Adjective law provides rules of practice concerning proceedings before, during, and after trial, and rules of evidence relating to the admission of evidence at trials and the testing of the credibility and competency of witnesses.

(4) *Criminal and Civil Law*—Criminal law is that branch of law which defines crimes and provides punishments. Civil law relates to the establishment, recovery, or redress of private and civil rights.

**322.2** (1-18-80) 9781  
**Definitions of Crimes**

An act is a crime against the United States only if committed or omitted in violation of a statute forbidding or commanding it, or in violation of a regulation having legislative authority. Crimes are classified and defined in section 1, Title 18, United States Code, as follows:

"Notwithstanding any Act of Congress to the contrary:

"(1) Any offense punishable by death or imprisonment for a term exceeding one year is a felony.

"(2) Any other offense is a misdemeanor.

"(3) Any misdemeanor, the penalty for which does not exceed imprisonment for a period of six months or a fine of not more than \$500, or both, is a petty offense."

**322.3** (1-18-80) 9781  
**Parties to Criminal Offenses**

(1) Section 2, Title 18 defines as principal, and punishable as such, one who commits an offense against the United States; aids, abets, counsels, commands, induces or procures its commission; or willfully causes an act to be done which if directly performed by him or another would be an offense against the United States. (See 222.2)

(2) An aider and abettor may be convicted even if the person who commits the offense has not been indicted, tried or convicted. [*Gray v. U.S.*; *Beauchamp v. U.S.*] One who causes a criminal act may be convicted even if the performer of the act is acquitted. [*U.S. v. Lester*] Acquittal of one mistakenly charged with commission of a crime does not affect the guilt of one proved to have aided and abetted, so long as it is established that the crime was committed by someone. [*Von Patzoll v. U.S.*; *Legatos v. U.S.*]

(3) To aid and abet, a defendant must associate himself with a venture, whether or not there is a conspiracy, and try to make it succeed. Thus, in *United States v. Johnson*, where the crime of attempted tax evasion by the main defendant was based on alleged concealment of his interest in, and income from, gambling clubs, his co-defendants were held to be guilty because they consciously were parties to the concealment by pretending to be proprietors even if they did not actually share in the making of false returns. A defendant charged with aiding and abetting in bribery need not have been present when the bribe was paid. [*Daniels v. U.S.*]

(4) A principal is not liable for a *crime committed by an agent* solely because of the relationship. He/she will be liable only if the act of the agent is with his/her knowledge or consent or he/she otherwise comes within the provisions of section 2 of Title 18. The agent, himself/herself, is criminally responsible for his/her own actions.

(5) A person becomes an *accessory after the fact*, if, with knowledge of the commission of a crime, he/she assists in preventing or hindering the apprehension, trial or punishment of the perpetrator. [18 USC 3] Suppressing important evidence also comes within this category. [*Neal v. U.S.*] A person is guilty of *misprision of felony* if he/she has knowledge of the actual commission of a felony, conceals it, and does not make this known to a person in authority as soon as possible. [18 USC 4.]

(6) A *corporation* can be prosecuted for the criminal acts of its officers concerning corporate affairs, but the only possible punishment is by fine. However, the officers themselves are also criminally liable for these same acts. [*Currier Lumber Co. v. U.S.*]

### 323 (1-18-80)

9781

## Evidence (General Rules)

### 323.1 (1-18-80)

9781

## Definition of Evidence

*Evidence* is all the means by which any alleged matter or fact, the truth of which is submitted to investigation, is established or disproved. Investigators obtain evidentiary facts which by inference tend to prove or disprove the ultimate, main, or principal fact. The latter is a matter for determination by a court or jury. For example, a special agent obtains, in connection with a net worth case, documents and oral

statements showing that a taxpayer's bank balance has increased substantially. That is an evidentiary fact from which an *inference* may be drawn relative to the ultimate or principal fact, namely, that the taxpayer willfully attempted to evade income tax. Legal evidence is such as is admissible in court under the rules of evidence because it tends reasonably and substantially to prove a fact. *Evidence is distinguished from proof* in that the latter is the result or effect of evidence.

### 323.2 (1-18-80)

9781

## Classifications of Evidence

(1) *Direct evidence* is that which, if believed, proves the existence of the principal or ultimate fact without any inference or presumption. It is direct when the very facts in dispute are sworn to by those who have actual knowledge of them by means of their senses. It may take the form of admissions or confessions made in or out of court.

(2) *Circumstantial evidence* is that which tends to prove the existence of the principal fact by inference. The use of circumstantial evidence is recognized by the courts as a legitimate means of proof, and involves proving several material facts which, when considered in their relationship to each other, tend to establish the existence of the principal or ultimate fact. In the absence of a confession of a witness to whom the violator has expressed his intent, violations involving willful intent are proved by circumstantial evidence. Indeed, it is the only type of evidence generally available to shown such elements of a crime as malice, intent, or motive, which exist only in the mind of the perpetrator of the deed. The proof of most Internal Revenue violations, therefore, is based on circumstantial evidence. Circumstantial evidence includes direct testimony as to secondary facts which are relied on to establish the main fact in issue. For example, in a tax evasion case, a taxpayer's customer testifies that he/she paid \$10,000 for merchandise and a Government agent testifies that the payment does not appear on the taxpayer's books and tax returns. Those facts constitute direct evidence of the omission of \$10,000 in income but not of the main issue, which is, "Did the defendant willfully attempt to evade income tax?"

(a) In addition to proving intent, a subject covered in greater detail in text 41(11).2 on will-



fulness, circumstantial evidence is also frequently used to prove unreported income as shown by increases in net worth, expenditures, or bank deposits.

(b) Circumstantial evidence may be as cogent and convincing as direct evidence and the jury may properly find that it outweighs conflicting direct evidence. However, the inference must be based on convincing facts and must be a more probable and natural one than other explanations offered. The Supreme Court in the Holland case stated as follows:

"Circumstantial evidence in this respect is intrinsically no different from testimonial evidence. Admittedly, circumstantial evidence may in some cases point to a wholly incorrect result. Yet this is equally true of testimonial evidence. In both instances, a jury is asked to weigh the chances of the evidence's correctly pointing to guilt against the possibility of inaccuracy or ambiguous inference. In both, the jury must use its experience with people and events in weighing the probabilities. If the jury is convinced beyond a reasonable doubt, we can require no more."

(3) *Evidence may be positive or negative*—Evidence is positive when it relates to proof that a fact did or did not happen or exist. Evidence is negative when a witness states that he does not have knowledge of the happening or existence of a fact or circumstance. Examples of the latter are testimony that the records of a District Director do not show that the taxpayer filed a return and testimony of an agent that he/she examined records relating to real estate, bank accounts, and other assets in a given area and did not find any additional assets at the starting point. Positive evidence is stronger than negative evidence. In the Holland case the Supreme Court held that proof of a likely source of unreported income was sufficient to convict in a net worth case without negating all possible nontaxable sources of the alleged net worth increases. However, certain facts can be shown only by negative evidence. In the Massei case the Supreme Court held that proof of a likely source of unreported income is not necessary where all possible sources of nontaxable income were negated.

(4) *Evidence also may be classified as oral, documentary, and real*—Evidence may be presented orally through witnesses, or by the introduction of records or other physical objects. Oral testimony consists of statements made by living witnesses under oath or affirmation. Documentary evidence consists of writings such as

judicial and official records, contracts, deeds, and less formal writings such as letters, memorandums, and books and records of private persons and organizations. Maps, diagrams, and photographs are classed as documentary evidence. Real or physical, sometimes called demonstrative evidence, relates to tangible objects or property which are admitted in court or inspected by a trier of facts. More detailed information regarding oral testimony and documentary evidence is presented in text 737 and 350, respectively.

### 323.3 (1-18-80)

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#### Relevancy, and Competency

(1) To be admissible evidence must be relevant, and competent. If a fact offered in evidence relates in some logical way to the principal fact, it is *relevant*. The word *relevant* implies a traceable and significant connection. A fact need not bear directly on the principal fact. It is sufficient if it constitutes one link in a chain of evidence or that it relates to facts which would constitute circumstantial evidence that a fact in issue did or did not exist. One fact is logically relevant to another if, taken by itself or in connection with other facts, it proves or tends to prove the existence of the other fact. If the fact is logically relevant, it is also legally relevant unless it is barred by some rule of evidence. The principal question to be resolved in determining relevancy is: "Would the evidence be helpful to the finder of the fact in resolving the issue?" (Rule 401, Federal Rules of Evidence).

(2) The terms *relevant* and *competent* are not synonymous. Evidence must not only be logically relevant and sufficiently persuasive but also legally admissible, in other words, *competent*. Relevant evidence may be *incompetent* and hence inadmissible because it is hearsay, or not the best evidence.

(3) The word "irrelevant" usually refers more particularly to the statement sought to be elicited. Although incompetency may relate to documents, in many cases it may go to the person of the witness in that he/she may be under some disability which prevents him/her from testifying in the particular case. For example, a person is not competent to testify if he/she does not understand the nature of an oath or is unable to narrate with understanding the facts he/she has seen.

(4) As applied to evidence such as documents, evidence is competent if it was obtained in a manner, in a form, and from a source proper under the law. Examples of incompetent evidence are a confession involuntarily obtained or an unsigned carbon copy of a document which is offered without any explanation for the failure to produce the original.

(5) Evidence may have limited admissibility. The fact that certain evidence is not admissible for one purpose, does not preclude its use for another. An evidentiary fact may not be admissible as independent proof of the principal fact, and yet be admitted to corroborate or impeach. To illustrate, tax returns for years prior to those in an indictment may be used to corroborate the starting point for a net worth computation although they would not be admissible as proof of the charge of attempted evasion.

(6) A special agent should obtain and report all facts which logically relate to the subject of his/her investigation. He/she should not omit any significant facts because of *doubt* regarding their relevance. There are no absolute and concrete standards for relevancy because the facts vary in each case. Therefore, judges have broad discretion in determining what evidence is relevant. Likewise, the special agent should not omit evidence because of doubt as to its materiality or competency.

### 323.4 (1-18-80)

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#### Judicial Notice

(1) To save time and expense, a trial judge may accept certain facts without requiring proof, if they are commonly and generally known, or can be easily discovered. [Application of Knapp-Monarch Co.; *Porter v. Sunshine Packing Co.*] Judicial notice of such facts takes the place of proof and is of equal force. This does not prevent a party from introducing evidence to dispute the matter. [App. of Knapp-Monarch Co., 9 Wigmore on Evid. (3rd Ed.) sec. 2567.]

(2) A matter of judicial notice may be said to have three material requisites:

(a) It must be a matter of common and general knowledge (or capable of accurate and ready demonstration). [App. of Knapp-Monarch Co.]

(b) It must be well-settled and not uncertain; and

(c) It must be known to be within the limits of the jurisdiction of the court. [20Am. Jurisprudence, Evidence, p. 81, sec. 59.]

(3) A Federal court must take judicial notice of such matters as the Constitution, statutes of the United States (including legislative history), [*Alaska v. American Can Co.*] treaties, contents of the Federal Register, in which the Internal Revenue and other administrative regulations are published, and the laws of each state. [*Lamar v. Micou*; Application of Dandridge.] Laws of foreign jurisdictions are not judicially noticed.

(4) A Federal court will judicially notice its record in the same case. [*U.S. v. Russell*] It is not required to notice prior litigation in the same court, [*Benetti v. U.S.*] but may do so under certain circumstances where the prior proceedings are closely related, as in a contempt proceeding. [*O'Malley v. U.S.*]

(5) Federal courts may also judicially notice such matters as scientific and statistical facts, well-established commercial usages and customs, and historical and geographical facts.

### 323.5 (1-18-80)

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#### Presumptions

(1) A presumption is a rule of law which permits the drawing of a particular inference as to the existence of one fact not certainly known from the existence of other particular facts. Although it is not evidence, it may be considered as a substitute for evidence. Any inference is a permissible deduction from the evidence and may be accepted or rejected by the trier of fact whether it be the court or a jury. It differs from a presumption in that the latter is a rule of law affecting the duty of proceeding with the evidence. For example, there is a *presumption* in civil cases that the Commissioner's determination of additional income is correct, [Rule 32, Rules of Practice, Tax Court: *Welch v. Helvering, Botany Mills v. U.S.*] although he still has the burden of proving intent to evade tax. However, an *inference* of such intent may arise from certain proved facts.

(2) Presumptions may be conclusive or rebuttable. A *conclusive presumption* is binding upon the court and jury and evidence in rebuttal is not permitted. For example, it is generally recognized that an infant under the age of seven is conclusively presumed to be incapable of committing a felony.

(3) A *rebuttable presumption* is one which prevails until it is overcome by evidence to the contrary. Some rebuttable presumptions are:

(a) In criminal cases, a defendant is presumed to be innocent until he/she is proved guilty beyond a reasonable doubt.

(b) A presumption as to authenticity of signatures on Internal Revenue documents is covered by IRC 6064, which provides: "The fact that an individual's name is signed to a return, statement, or other document shall be prima facie evidence for all purposes that the return, statement or other document was actually signed by him." Presumptions as to the authorization for signing corporation and partnership returns are contained in IRC 6062 and 6063.

(c) It is presumed that public officers perform their duties according to law and do not exceed their authority.

(d) Every person is presumed to know the law, and ignorance of the law is no excuse for its violation. This presumption does not relieve the government from proving willfulness in criminal actions for violation of the internal Revenue laws. The defendant may show his/her misconception of the internal Revenue law as evidence of his/her lack of willfulness. [*Haigler v. U.S.*]

(e) A person signing an instrument is presumed to have knowledge of its contents.

(f) A person of ordinary intelligence is presumed to intend the natural and probable consequences of his voluntary acts. Although this presumption in itself will not relieve the burden of proving willfulness, it does operate to permit inferences to be drawn from the acts of the defendant which may constitute the circumstantial proof of willfulness. [*McKenna v. U.S.*]

(g) The deductions and exclusions appearing on an income tax return are presumed to be all that exist. [*U.S. v. Bender*]

(h) Every person is presumed to be sane.

(i) Proof that a letter, properly stamped and addressed, was mailed and not returned to the return address creates a presumption that it was received.

(j) The flight of a person accused of a crime or an attempt to evade arrest may create a presumption of guilt.

(k) The destruction, mutilation, or concealment of books and records or other evidence creates a presumption that the production of

the records or evidence would be unfavorable to the person destroying them. A fabricator of evidence also creates a presumption against himself/herself. It is proper for a court to charge the jury that it may consider the taxpayer's refusal to produce his/her books and records for Internal Revenue inspection, in determining the question of willfulness. [*Louis C. Smith v. U.S.*; *Beard v. U.S.*; *Olson v. U.S.*; *Myres v. U.S.*]

### 323.6 (1-18-80) Burden of Proof

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(1) Burden of proof is the obligation of the party alleging the affirmative of an issue to prove it. This burden remains on the Government throughout a criminal trial although the burden of going forward with evidence may shift from one side to the other. [*Lisansky v. U.S.*]

The doctrine of judicial notice and the operation of presumptions are aids in carrying the burden of proof and in proceeding with evidence. When the party having the burden of proof has produced sufficient evidence for the jury to return a verdict in favor of such party, a *prima facie* case has been established. This does not mean that the jury will render such a verdict, but that they could do so from the standpoint of sufficiency of evidence. At this point the defendant has two choices. He/she may choose to offer no evidence, relying on the court and jury to decide that the Government has not overcome the presumption of innocence, or he/she may offer evidence in his defense. If he/she wishes to introduce new matters by way of denial, explanation, or contradiction, the burden of going forward with evidence is his/her, although the prosecution still has the burden of proof with respect to the entire case. The court pointed this out to a jury in the Littlefield case in the following language:

"The burden of proof is not upon the defendant to prove that he/she did believe that the way in which he/she computed and returned his/her income was correct, but the burden is upon the Government to prove beyond a reasonable doubt that the defendant intended to commit a crime and intended willfully to defraud the Government. If you have a reasonable doubt arising from the evidence as to whether or not in computing and returning his/her income for the years involved here the defendant acted in good faith according to the best of his/her knowledge and understanding, even though his method of computation might have been entirely wrong, it is your duty to find him not guilty."

(2) Proof beyond a reasonable doubt of every element of the crime charged is necessary for a conviction. In charging a jury as to the meaning of reasonable doubt, the judge in *U.S. v. Sunderland* stated:

"A reasonable doubt, is a doubt founded upon a consideration of all the evidence and must be based on reason. Beyond a reasonable doubt does not mean to a moral certainty or beyond a mere possible doubt or an imaginary doubt. It is such a doubt as would deter a reasonably prudent man or woman from acting or deciding in the more important matters involved in his or her own affairs. Doubts which are not based upon a reasonable and careful consideration of all the evidence, but are purely imaginary, or born of sympathy alone, should not be considered and should not influence your verdict. It is only necessary that you should have that certainty with which you transact the more important concerns in life. If you have that certainty, then you are convinced beyond a reasonable doubt.

"A defendant may not be convicted upon mere suspicion or conjecture. A defendant should be acquitted if the evidence is equally consistent with innocence as with guilt."

(3) In *civil cases* the burden of proof ordinarily is on the plaintiff to prove his/her case, without any presumption against him/her at the outset. In tax cases, however, the burden is upon the plaintiff or petitioner (taxpayer) to overcome the presumption of correctness of the Commissioner's determination of the deficiency. [*Avery v. Comm.*] Rule 32 of the Rules of Practice, Tax Court, provides: "The burden of proof shall be upon the petitioner, except as otherwise provided by statute, and except that in respect of any new matter pleaded in his answer, it shall be upon the respondent." There are four important exceptions to the above rule, namely, fraud cases, [*Paddock v. U.S.*] where assessment is asserted within the six-year limitation on account of alleged omission of more than 25 percent of gross income stated in the return, other new matters pleaded by the Commissioner, and transferee proceedings.

(a) The Internal Revenue Code provides that the burden of proofs is on the Commissioner where fraud is alleged. IRC 7454 states: "In any proceeding involving the issue whether the petitioner has been guilty of fraud with intent to evade tax, the burden of proof in respect of such issue shall be upon the Secretary or his delegate." As a matter of general law it has always been held that one who alleges fraud must prove it. [*Budd v. Comm.*]

(b) Where, under IRC 6501(e), the Commissioner makes an assessment after the three-year limitation period, but within six years after the return is filed, because of omission of more than 25 percent of the amount of gross income shown in the return, the burden of proving the required omission is on him/her. [*Reis v.*

*Comm.*] This is in line with the general rule that one relying on an exception to the statute of limitations must prove the exception. [*Wood v. Comm.*]

(c) Tax Court Rule 32 provides that the Commissioner has the burden of proving new matters pleaded by him/her in answer to the petition. This is an application of the general rule of law regarding evidence which places the burden on the party alleging the fact at issue.

(d) The Commissioner has the burden of proof to establish transferee liability. IRC 6902 provides: "In proceedings before the Tax Court the burden of proof shall be upon the Secretary or his delegate to show that a petitioner is liable as a transferee of property of a taxpayer, but not to show that the taxpayer was liable for the tax." The original tax deficiency is presumed to be correct and the transferee has the burden of establishing its incorrectness.

(4) *The degree of proof required in civil cases* is a "preponderance of evidence," except where fraud is alleged. In the latter case, "clear and convincing evidence" is necessary in order to prevail on the fraud issue. [*Rodd v. Fahs*]

(a) *Preponderance of evidence* is evidence that will incline an impartial mind to one side rather than the other so as to remove the cause from the realm of speculation. It does not relate merely to the quantity of evidence. In the *Wissler* case the court's instruction concerning preponderance of evidence was as follows:

"The terms 'preponderance of evidence' and 'greater weight of evidence' as used in these instructions are terms of practically the same meaning, and when it is said that the burden rests upon either party to establish any particular fact or proposition by a preponderance or greater weight of evidence, it is meant that the evidence offered and introduced in support thereof to entitle said party to a verdict, should when fully and fairly considered produce the stronger impression upon the mind and be more convincing when weighed against the evidence introduced in opposition thereto. Such preponderance is not always to be determined by the number of witnesses on the respective sides, although it may be thus determined all other things being equal."

(b) *Clear and convincing evidence* is that which need not be beyond a reasonable doubt as in a criminal case but must be stronger than a mere preponderance of evidence. In the *Gladden* case the court instructed the jury on this point as follows:

"A mere preponderance of the evidence, meaning merely the greater weight of the evidence, is not sufficient to prove fraud. This does not mean that you must be convinced of fraud beyond a reasonable doubt, because this is not a criminal case. However, an allegation of fraud does require a greater degree of proof than is required in most civil cases, and a mere preponderance of the evidence, while enough to

incline the mind of an impartial juror to one side of the issue rather than the other, is not enough to prove fraud. Fraud must be established by evidence which is clear, cogent and convincing."

**323.7** (1-18-80)

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**Hearsay (Federal Rules of Evidence Article VIII)**

(1) A *statement* is an oral or written assertion or nonverbal conduct of a person, if it is intended by a person as an assertion (Rule 801(a)). Hearsay statements are inadmissible at trial unless an exception is applicable (Rule 802). Lack of opportunity for cross-examination and unreliability are the principal reasons for excluding hearsay testimony.

(2) *Hearsay* is a statement, other than one made by the declarant while testifying at the trial of hearing, offered in evidence to prove the truth of the matter asserted (Rule 801(c)). Evidence which does not come from the personal knowledge of the declarant but from the repetition of what the declarant has heard others say is hearsay. For example, testimony of a special agent that third parties made statements to the agent that checks written by a taxpayer were personal in nature is hearsay and inadmissible. The personal nature of the checks would be proved through the taxpayer's admissions and records, and testimony and records of the third parties.

(3) The following statements are not hearsay under the provisions of Rule 801(d):

"(1) *Prior statement by witness.* The declarant testifies at the trial or hearing and is subject to cross-examination concerning the statement, and the statement is (A) inconsistent with his testimony, and was given under oath subject to the penalty of perjury at a trial, hearing, or other proceeding, or in a deposition, or (B) consistent with his testimony and is offered to rebut an express or implied charge against him of recent fabrication or improper influence or motive, or "[This could also include one of identification of a person made after perceiving him/her.]

"(2) *Admission by party-opponent.* The statement is offered against a party and is (A) his own statement, in either his individual or a representative capacity, or (B) a statement of which he has manifested his adoption or belief in its truth, or (C) a statement by a person authorized by him to make a statement concerning the subject, or (D) a statement by his

agent or servant concerning a matter within the scope of his agency or employment, made during the existence of the relationship, or (E) a statement by a coconspirator [SIC] of a party during the course and in furtherance of the conspiracy."

(4) Rule 801(d)(1)(A) provides that when a witness testifies at a trial or hearing and is subject to cross-examination concerning a prior statement inconsistent with the witness' present testimony, the prior statement may be admitted for its truth if the witness made it under oath in a previous proceeding (excluding grand jury) or deposition. A proceeding is a formal evidentiary hearing where the witness/declarant is subject to cross-examination. Testimony taken by a special agent in an affidavit or question and answer statement does not qualify.

(5) Admissions of a party-opponent (e.g. taxpayer) which are offered against the party are not hearsay (Rule 801(d)(2)). The admissions include statements:

- (a) made by the party, or
- (b) shown to have been adopted or believed by the party (adoptive/implied admission), or
- (c) made by a person authorized by the party to make a statement concerning the subject of the statement, or
- (d) made by an agent or servant of the party concerning a matter within the scope of the agency/employment, and made during the existence of the relationship, or
- (e) made by a coconspirator during the course and in furtherance of a conspiracy.

(6) Rules 803 and 804 specify certain exceptions to the hearsay rule. The exceptions are based on the theory that under appropriate circumstances a hearsay statement is of the type that makes its trustworthiness and truthfulness highly probable and the statement is necessary to prove the fact alleged. In these instances the statements can be introduced by other than the declarant even though the declarant is available to testify.

(7) Rule 803, *Hearsay Exceptions; Availability of Declarant Immaterial*, lists twenty-four (24) statements which are not to be excluded by the hearsay rule. Some of the more important exceptions are:

- (a) (Rule 803(1)) "*Present sense impression.*—A statement describing or explaining an event or condition made while the declarant was perceiving the event or condition or immediately thereafter."

(b) (Rule 803(2)) "*Excited utterance.*—A statement relating to a startling event or condition made while the declarant was under the stress of excitement caused by the event or condition." This exception refers to spontaneous declarations and acts committed during the event. The trustworthiness of such statements lies in their spontaneity, for the occurrence must be startling enough to produce a spontaneous and unreflective utterance without time to contrive or misrepresent. Once the excitement passes, statements made are not within this exception. They may be made by participants or bystanders, and a person who made or heard such statements may testify about them in court. The trial judge has wide discretion in deciding the admissibility of unsworn statements. The circumstances involved in a raid on a bookmaking establishment may be used to illustrate the application of this rule. One of the persons in the establishment, upon seeing the raiding officers enter the room says: "Burn the betting slips!" Even though the speaker is never identified and is not available as a witness, an agent who heard the statement may be permitted to testify about it in a trial of John Doe, to prove that betting slips existed.

(c) (Rule 803(3)) "*Then existing mental, emotional, or physical condition.*—A statement of the declarant's then existing state of mind, emotion, sensation, or physical condition (such as intent, plan, motive, design, mental feeling, pain and bodily health), but not including a statement of memory or belief to prove the fact remembered or believed, unless it relates to the execution, revocation identification, or terms of declarant's will." Example: Assume that the taxpayer is alleging that the return preparer was in a state of depression when the return was prepared and is responsible for errors on the tax return. A witness (e.g. the return preparer's secretary) who spoke with the return preparer at the time the return was being prepared, could testify that the return preparer expressed a feeling of mental well-being and confidence. The witness could testify, whether or not the return preparer was available.

(d) (Rule 803(4)) "*Statements for purposes of medical diagnosis or treatment.*—Statements made for purposes of medical diagnosis or treatment and describing medical history, or past or present symptoms, pain, or sensations, or the inception or general character of the cause or external source thereof, insofar as reasonably pertinent to diagnosis or treatment." This section does not change the law of

privilege (HB 244.6).

(e) (Rule 803(5)) "*Recorded recollection.*—A memorandum or record concerning a matter about which a witness once had knowledge but now has insufficient recollection to enable him to testify fully and accurately, shown to have been made or adopted by the witness when the matter was fresh in his memory and to reflect that knowledge correctly. If admitted, the memorandum or record may be read into evidence but may not itself be received as an exhibit unless offered by an adverse party." Example: A special agent has taken a question and answer statement from a witness. At trial, the witness no longer recollects the facts in the statement. Even if the witness has not initialed the pages and/or signed the statement, the facts of the statement could be read at trial as a record adopted by the witness. In the case of an unsigned affidavit, if it can be shown that the witness indicated that the facts recorded were true, the facts of the unsigned affidavit could be read as a statement adopted by the witness. Similarly, if a witness had in some way indicated the adoption of a memorandum prepared by a special agent, the memorandum could be read as evidence. (See also HB 637.6, Refreshing Memory or Recollection.)

(f) (Rule 803(6)) "*Records of regularly conducted activity.*—A memorandum, report, record, or data compilation, in any form, of acts, events, conditions, opinions, or diagnoses, made at or near the time by, or from information transmitted by, a person with knowledge, if kept in the course of a regularly conducted business activity, and if it was the regular practice of that business activity to make the memorandum, report, record, or data compilation, all as shown by the testimony of the custodian or other qualified witness, unless the source of information or the method or circumstances of preparation indicate lack of trustworthiness. The term 'business' as used in this paragraph includes business, institution, association, profession, occupation, and calling of every kind, whether or not conducted for profit." This rule permits showing that an entry was made in a business record maintained in the ordinary course of business without producing the person who made the entry (HB 253.21). Where there is an indication that the particular record lacks trustworthiness, this rule does not apply. This rule extends the definition of business to include records of institutions and associations like schools,

churches, and hospitals. The rule covers data compilations whether stored in a computer or elsewhere.

(g) (Rule 803(8)) "*Public records and reports.*—Records, reports, statements or data compilations, in any form, of public offices or agencies, setting forth (A) the activities of the office or agency, or (B) matters observed pursuant to duty imposed by law as to which matters there was a duty to report, excluding, however, in criminal cases matters observed by police officers and other law enforcement personnel, or (C) in civil actions and proceedings and against the Government in criminal cases, factual findings resulting from an investigation made pursuant to authority granted by law, unless the source of information or other circumstances indicate lack of trustworthiness."

1 The admissibility of official records and copies of transcripts thereof in Federal proceedings is further covered by 28 U.S.C. 1732, *Record made in regular course of business; photographic copies* [HB 253.2]; 28 U.S.C. 1733, *Government records and papers; copies* [HB 253.3]; and *Rule 27, Federal Rules of Criminal Procedure.*

(h) (Rule 803(17)) "*Market reports, commercial publications.*—Market quotations, tabulations, lists, directories, or other published compilations, generally used and relied upon by the public or by persons in particular occupations."

(i) (Rule 803(21)) "*Reputation as to character.*—Reputation of a person's character among his associates or in the community."

1 Rule 803(21) makes admissible the kind of reputation evidence that is provided for in Rule 405(a), *Methods of Proving Character*; and Rule 608(a), *Evidence of Character and Conduct of Witness* (HB 637.4).

(j) (Rule 803(22)) "*Judgment of previous conviction.*—Evidence of a final judgment, entered after a trial or upon a plea of guilty (but not upon a plea of nolo contendere), adjudging a person guilty of a crime punishable by death or imprisonment in excess of one year, to prove any fact essential to sustain the judgment, but not including, when offered by the Government in a criminal prosecution for purposes other than impeachment, judgments against persons other than the accused. The pendency of an appeal may be shown but does not affect admissibility."

(k) (Rule 803(24)) "*Other exceptions.*—A statement not specifically covered by any of the foregoing exceptions but having equivalent circumstantial guarantees of trustworthiness, if the court determines that (A) the statement is offered as evidence of a material fact; (B) the statement is more probative on the point for which it is offered than any other evidence which the proponent can procure through reasonable efforts; and (C) the general purposes of these rules and the interests of justice will best be served by admission of the statement into evidence. However, a statement may not be admitted under this exception unless the proponent of it makes known to the adverse party sufficiently in advance of the trial or hearing to provide the adverse party with a fair opportunity to prepare to meet it, his intention to offer the statement and the particulars of it, including the name and address of the declarant."

1 Rule 803(24) is repeated in Rule 804(b)(5). Under this, the court, having determined that a statement offered as evidence of a material fact is more probative on the point for which it is offered than any other evidence which a proponent can procure by reasonable efforts, may admit the evidence if, by so doing, the general purposes of the Federal Rules of Evidence and the interests of justice will be served. The evidence must demonstrate circumstantial guarantees of trustworthiness and the parties must be advised of its potential use in advance of trial. The use of this exception is rare and should not be relied upon.

(8) Rule 804, *Hearsay Exceptions: Declarant Unavailable.* Rule 804 concerns itself with hearsay exceptions that are limited to situations in which the declarant is unavailable as a witness. Rule 804 is quoted below (except material in brackets):

(a) *Definition of unavailability.*—Unavailability as a witness includes situations in which the declarant—

"(1) is exempted by ruling of the court on the ground of privilege from testifying concerning the subject matter of his statement; or

"(2) persists in refusing to testify concerning the subject matter of his statement despite an order of the court to do so; or

"(3) testifies to a lack of memory of the subject of his statement; or

"(4) is unable to be present or to testify at the hearing because of death or then existing physical or mental illness or infirmity; or

"(5) is absent from the hearing and the proponent of his statement has been unable to procure his attendance (or in the case of a hearsay exception under subdivision (b)(2), (3), or (4), his attendance or testimony) by process or other reasonable means. "A declarant is not unavailable as a witness if his exception, refusal, claim of lack of memory, inability, or absence is due to the procurement or wrongdoing of the proponent of his statement for the purpose of preventing the witness from attending or testifying."

(b) *Hearsay exceptions.*—The following are not excluded by the hearsay rule if the declarant is unavailable as a witness:

"(1) *Former testimony.*—Testimony given as a witness at another hearing of the same or a different proceeding, or in a deposition taken in compliance with law in the course of the same or another proceeding, if the party against whom the testimony is now offered, or, in a civil action or proceeding, a predecessor in interest, had an opportunity and similar motive to develop the testimony by direct, cross, or redirect examination." [Under this section, it does not matter whether the opportunity for examination came in the form of direct or cross-examination, as long as there was adequate opportunity to develop the testimony of the witness in the prior formal hearing.]

"(2) *Statement under belief of impending death.*—In a prosecution for homicide or in a civil action or proceeding, a statement made by a declarant while believing that his death was imminent, concerning the cause or circumstances of what he believed to be his impending death." [This exception is applicable only in homicide cases or related civil actions. Dying declarations are not normally relevant to tax investigations.]

"(3) *Statement against interest.*—A statement which was at the time of its making so far contrary to the declarant's pecuniary or proprietary interest, or so far tended to subject him to civil or criminal liability, or to render invalid a claim by him against another, that a reasonable man in his position would not have made the statement unless he believed it to be true. A statement tending to expose the declarant to criminal liability and offered to exculpate the accused is not admissible unless corroborating circumstances clearly indicate the trustworthiness of the statement." [The party introducing the statement should be prepared to show that the declarant was aware that the statement was against interest at the time it was made.]

"(4) *Statement of personal or family history.*—(A) A statement concerning the declarant's own birth, adoption, marriage, divorce, legitimacy, relationship by blood, adoption, or marriage, ancestry, or other similar fact of personal or family history, even though declarant

had no means of acquiring personal knowledge of the matter stated; or (B) a statement concerning the foregoing matters, and death also, of another person, if the declarant was related to the other by blood, adoption, or marriage or was so intimately associated with the other's family as to be likely to have accurate information concerning the matter declared."

"(5) *Other exceptions.*" [These are the same as those specified in Rule 803(24) (HB 223.7(7)).]

### 330 (1-18-80) 9781 Sources of Information

### 331 (1-18-80) 9781 Introduction

This material concerns sources of investigative information that may be useful to special agents of all districts. Districts offices may prepare an addenda of other sources which are applicable to investigations in the local area. Information regarding any corrections to the material in this section or any additional sources which are of sufficient importance to warrant inclusion in the Handbook may be forwarded to the Director, Criminal Investigation Division, National Office (CP:CI:P).

### 332 (1-18-80) 9781 Confidential Sources of Information

#### 332.1 (1-18-80) 9781 Manual References

Procedures for processing information from confidential sources are provided in IRM 9370 through 9373.

#### 332.2 (1-18-80) 9781 Informants

#### 332.21 (1-18-80) 9781 Definition of Informants

An informant is an individual who furnishes information to the Internal Revenue Service. Such information may be furnished on the informant's own initiative or as a result of being directed to furnish information by a special agent or other Service employee. (See IRM 9373.2)

#### 332.22 (1-18-80) 9781 Development of Informants

Many criminal tax cases have originated from information furnished by informants, and many have been successfully completed only because of the use of informants who have supplied information otherwise unavailable. This is



especially true with respect to taxpayers engaged in illegal activities.

**332.23** (5-9-80)

9781

**Protection of Informants**

(1) *During Investigations*—Communications of confidential informants are based on the informant's trust that his/her identity will not be disclosed and that he/she will not be harmed physically, economically, or otherwise because of his/her action in furnishing information to the Government. The protection of confidential informants, therefore, is absolutely essential in enforcement activities. Special agents will not divulge either the identity of the informant or the existence of a confidential informant in the case to anyone other than authorized persons. To provide maximum security regarding their identity and existence, confidential informants will not be used as witnesses, placed in a position where they might become witnesses, or unnecessarily identified in court without their consent. In order to avoid the conflict between preservation of an informant's anonymity and the possible disclosure of an informant's identity during the investigation and prosecution, the special agent should make a decision early in the investigation about the feasibility of development of other evidence to take the place of the informant as a witness. If this is not feasible, the case should generally be closed. Communications of confidential informants should not be attached to income tax returns, associated with workpapers, or included in the exhibits submitted with a report. Further precautions concerning the treatment of confidential sources of information in reports is set forth in 633.1:(1)(e).

(2) *In the Courts*

(a) It is the duty of every citizen to communicate to his/her Government any information which he/she has of an offense against its laws. To encourage him/her in performing his/her duty, the courts have held such information to be confidential within the discretion of the Government. The courts, on the basis of public policy, will not compel or allow disclosure of an informant's identity without the consent of the Government unless such information is useful evidence to vindicate the accused or lessen the risk of false testimony, or is essential to the proper disposition of the case. [*Rugendorf v. U.S.*; *Roviaro v. U.S.*] Since the privilege exists in behalf of the Government and not the infor-

mant, the Government may waive it, and it is deemed to be waived if the informant is put on the witness stand. [*U.S. v. Schneiderman*; *Segurola v. U.S.*] Further discussion of the law regarding privileged communications of informants is contained in 344.

(b) If a special agent, who has promised an informant that he/she would keep his/her identity confidential, is asked to disclose such identity on the witness stand and no objection to the question is made or sustained, he/she should not refuse to answer, but should state that he/she cannot disclose the information on the ground that it was a privileged communication to an officer of the Government, [*Scher v. U.S.*] and that he/she is bound by instructions not to disclose such information. He/she should maintain this position pending instructions from his/her superiors and advice from the United States Attorney. The special agent's failure to disclose this information may have several results:

1 The court may, if he/she thinks that no harm is done the defendant, uphold the special agent;

2 The court may dismiss the action;

3 The special agent's superiors may release him/her from his/her obligation; or

4 If he/she persists in his/her refusal to answer, the court may find him/her in contempt.

**332.24** (1-18-80)

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**Techniques With Informants**

(1) Be fair and truthful with informants. Make no promises that you do not intend to fulfill. Show appreciation for the information furnished but do not let an informant determine the procedure to be used in the investigation or otherwise control it. A Government officer must not condone any violation of law in order to obtain information. Informants may, through ignorance or zeal, induce a violation. If a defendant can show that the informant who induced him/her to commit a violation was acting under some arrangement with Government officers, he/she has a legal defense. Therefore, whenever there appears to be a possibility of entrapment or some other unlawful act by an informant, he should be guided in a manner that will prevent the occurrence of such acts.

(2) Some informants supply only what information they think the officer does not know. The receiver, therefore, should in all instances make every effort to get all facts within the knowledge of the informant. If a telephone call is received from an anonymous source, the receiver should strive to elicit all possible information before the connection is broken because the caller may not offer any further opportunity for communication.

(3) Informants provide information for a variety of reasons. In estimating the reliability of an informant and evaluating the information which he furnished, consideration should be given to his/her motive.

(4) A special agent who receives information about a taxpayer from an informant should check the Criminal Investigation Division files, inasmuch as the informant may have given an incorrect or incomplete name for the taxpayer. If the original file check discloses no record, and the special agent finds during his/her investigation that the taxpayer spells his/her name differently or uses names in addition to the name reported by the informant, the special agent should immediately recheck under the newly discovered name or names.

### 332.25 (1-18-80)

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#### Payments to Informants

(1) Instructions concerning rewards for information submitted to the IRS are contained in IRM 9371. Instructions concerning confidential expenditures and courtesy expenditures which involve payments to or on behalf of informants are contained in IRM 9372 and IRM 9373.3.

(2) Under no circumstances are Internal Revenue employees authorized to assure any person that a reward will be paid in any amount, nor should Internal Revenue personnel indicate to the informant in any manner the amount of the probable tax recovery or whether such recovery is based upon the information submitted by the informant. If inquiry is made as to the amount which may be received, the inquirer should be furnished with a copy of Publication 733, Rewards for Information Given to the Internal Revenue Service, pertaining to rewards for information about violations of the internal revenue laws.

### 333 (1-18-80)

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#### Information From Government Offices in Washington, D.C.

### 333.1 (1-18-80)

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#### General

(1) Requests for tax related information to be obtained from the following governmental offices located in Washington, D.C., shall be sent by the Chief, Criminal Investigation Division, with the concurrence of the District Director to the Director, Criminal Investigation Division, National Office, Attn: Chief, Operations Branch:

(a) national headquarters office of the Federal Bureau of Investigation;

(b) national headquarters office of Selective Service. Records of Selective Service applicants are confidential and the information therein may not be released except in cases where extraordinary circumstances, such as national security consideration, require disclosure;

(c) all congressional committees and subcommittees and their investigatory staffs;

(d) the Securities and Exchange Commission;

(e) National Office of the Internal Revenue Service;

(f) Federal Deposit Insurance Corporation; and

(g) any other requests for information to be obtained from departments and agencies in Washington, D.C. which is not routine in nature. If there is a question as to whether the material is of a routine nature, the request should be sent to the Director, Criminal Investigation Division, who will determine its disposition.

(2) Requests of a routine nature for information from other governmental offices located in Washington, D.C., shall be forwarded to the Chief, Criminal Investigation Division, Baltimore, Maryland, and not to the National Office.

(3) See IRM 9264.2.

### 333.2 (9-8-80)

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#### Social Security Administration Records

(1) Regulations under the Social Security Act authorize the Social Security Administration to disclose information to any officer or employee of the Department of the Treasury lawfully charged with the administration of Titles II, VIII, or IX of the Social Security Act, the Federal Insurance Contributions Act, the Self-Employment Act, or the Federal Unemployment Tax Act, or any Federal income tax law, for the purpose of such administration only. The regu-

lations expressly forbid further disclosure of information thus obtained, or its use for any purpose other than administration of the employment and income tax laws.

(2) The procedures described herein will be followed for all requests (other than those relating to benefit payments) except those made in situations which require a more expeditious response:

(a) Form 2264, Request for Social Security Account Information, shall be used in requesting the name and address of the latest reporting employer of a taxpayer from the records of the Social Security Administration (SSA). Such form shall not be used in requesting other information from the agency. The form should be prepared for each individual involved and care should be exercised to make certain that all applicable items are accurately completed. The space on the form designated "Originating Office" may be left blank or utilized to identify the post of duty of the special agent originating the form request. So that SSA can give priority to IRS criminal cases the form should be labeled as "IRS-CRITICAL CASE" at the top, in such instances. The taxpayer's name should be typed or legibly printed and his/her complete Social Security Number must be shown in order that the Social Security Administration may readily identify the proper account. When the Social Security Number is not known and an inquiry to the Social Security Administration is deemed essential, complete information must be furnished regarding the individual's full name, date and place of birth, and names of both parents including his/her mother's maiden name. IRS district codes, which are set out in text 142.(34):(3) of IRM 4810, Audit Reports Handbook, must be shown in the appropriate space on the form.

(b) When the name and address of the latest recorded employer is requested, the Social Security Administration will return the Form 2264 to the requesting IRS district with the information entered on an electronically prepared form attached to the Form 2264. In completing the space designated "Return To" on the Form 2264, there should be inserted "Attention: Chief, Criminal Investigation Division, and the address of the requesting district. The form will be signed by the Chief in the space

provided or by a subordinate supervisory official who has been authorized to sign the form.

(c) Agreement has been reached with the Social Security Administration that its records will be checked only for the calendar year in which the Form 2264 is submitted and, if no employer is found for that calendar year, for the two preceding calendar years.

(d) Requests for itemization of quarterly earnings, which identify employers and amounts of wages taxable under the Federal Insurance Contributions Act, may also be made to the Social Security Administration when such information is needed in the administration of employment and income tax laws. Requests of this type shall be made by memorandum stating that the information is to be used in an official investigation of an employment or income tax matter and identifying the period or periods for which an itemization of quarterly earnings is requested. In addition, the memorandum should show the taxpayer's name and complete Social Security Number, and the name, address, and code of the IRS district originating the request. So that SSA can give priority to IRS criminal cases "IRS-CRITICAL CASE" should be labeled before the body of the memorandum in such instances and should be mailed directly to the Social Security Administration, Division of Adjustment Operations, Receipt and Dispatch Unit, 4-N-7 South Block, Metro West Building, 300 North Greene Street, Baltimore, Maryland 21201. The symbols "Attn: 14:WR:AR" shown on Form 2264 should not be used on memorandum requests. The memorandum should be signed by the Chief, Criminal Investigation Division, or his/her delegate, after the words "For the District Director" in similar signature format to Form 2264. Exhibit 300-20 is an example of a memorandum format which meets the needs of the Social Security Administration for IRS Criminal Cases. If the request to the Social Security Administration should involve a racketeer or any person being investigated under the Special Enforcement Program, extreme care should be exercised not to divulge such information. The Social Security Administration will submit the information on its Form OAR 1009, accompanied by an electronically prepared form giving the names and addresses of the taxpayer's employers for the specified period.

(e) The Social Security Administration will endeavor to process Forms 2264 and requests for itemization of quarterly earnings as expeditiously as possible. Follow-up inquiries should not be made within sixty days from the date of the original request. If, after sixty days, it is found that a follow-up inquiry is necessary, a second request should be prepared in original only and forwarded to the Social Security Administration. However, the second request should not be identified as a follow-up or as a second request, and no reference should be made to the original request.

(f) The Social Security Administration has agreed to give emergency requests from the Director, Criminal Investigation Division, special handling which will lead to prompt responses. The Criminal Investigation Division, National Office, has agreed that such requests will be kept to a minimum. Therefore, expedite action will only be requested in those cases in which a prompt response is essential. The Chief, Criminal Investigation Division, with the concurrence of the District Director or Director of International Operations will telephone the Director, Criminal Investigation Division, National Office (CP:CI:O) and furnish the following information:

1 Sufficient taxpayer identifying and other information to permit the Social Security Administration to search its records.

2 Justification for special handling of the requests.

(g) The Criminal Investigation Division National Office will obtain the requested information and transmit it to the requesting district.

(h) Information regarding the payment of benefits can be obtained by contacting a Social Security Administration Payment Center. The payment center handling a particular account can be determined by reference to the first three digits of the claimant's social security account number. Exhibit 300-21 provides a list of Payment Centers and the numbers each handles.

(i) Special agents will not attempt to obtain information (except information concerning the payment of benefits) from Social Security Administration field establishments. All such requests should be directed to the Baltimore Office of the Social Security Administration or to the Criminal Investigation Division, National Office.

**333.3** (1-18-80)

9781

**Department of Labor Records**

(1) Under the Labor-Management Reporting and Disclosure Act of 1959, [29 U.S.C., Ch. 11] every labor organization engaged in an industry affecting commerce must file annually with the Secretary of Labor on Form LM-2 or LM-3, a financial report, including a Statement of Assets and Liabilities, and a Statement of Receipts and Disbursements.

(2) The Act also requires a report (Form LM-10) from every employer who makes or agrees to make any payment or loan, including reimbursed expenses, to any labor organization, labor relations consultant, or any union officer or employee. It requires as well, a report (Form LM-30) from a labor organization officer or employee who receives payments from an employer.

(3) Every labor relations consultant is required to file annually an Agreement and Activities Report (Form LM-20) detailing the specific activities engaged in, and a Receipts and Disbursements Report (Form LM-21), showing receipts from all employers for labor relations advice or services, and all disbursements by the consultant in connection with such activities. Legal fees received by an attorney in connection with labor relations, legal representation, litigation, or advice are excluded from these reporting requirements.

(4) The Welfare and Pension Disclosure Act directs that the administrator of an employee welfare or pension plan file with the Secretary of Labor a plan description (Form D-1) setting forth the plan benefits, other data, and an annual financial report (Form D-2) showing the amounts contributed by each employer and by the employees; the amount of benefits paid; the number of employees covered; and statements of assets, liabilities, receipts, and disbursements.

(5) Copies of reports filed under the Labor-Management Reporting and Disclosure Act ((1)-(3) above) may be inspected at the National Office of the Department of Labor, Office of Labor-Management Welfare Pension Reports, Washington, D.C., or at its area offices covering the geographical localities where the persons or organizations filing the reports have their principal places of business. Copies of reports filed under the Welfare and Pension Disclosure Act ((4) above) are available for inspection only at its National Office.

**333.4** (3-12-81)

9781

**State Department Records**

- (1) Import and Export Licenses
- (2) Foreign Information
- (3) Passport Records
- (4) Requests for information from the Department of State will be made by collateral request with procedures set forth in IRM 9264.1. Such requests will be forwarded to: Director of International Operations, Attention: Chief, Criminal Investigation Division, CP:OIO:7, for appropriate action. The request should include the taxpayer's Social Security number and the taxpayer's date and place of birth. The Director of International Operations will reply directly to the originating office.

**333.5** (1-18-80)

9781

**Securities and Exchange Commission Records**

- (1) SEC publications
  - (a) *Investment Advisor and Broker-Dealer Directories* contain current identifications of all investment advisors and broker-dealers registered with the Commission. The identifications include the name and principal mailing address of each of these persons and/or entities; the type of organization it is, where appropriate; and their effective registration date with the Commission. There is also an application or background file available for each of these.
  - (b) *SEC Daily News Digests* contain daily summaries of civil, criminal and administrative actions initiated by the Commission's Division of Enforcement in addition to other items of interest to the securities industry. The *SEC Weekly Docket* is a weekly summary of items that appeared in the daily Digests.
  - (c) The Quarterly SEC Securities Violations Bulletin lists all enforcement actions completed by the Commission for the preceding quarter. These include identification of all civil, criminal and administrative proceedings such as suspension and/or revocation of registrations, cease and desist orders, indictments, convictions, and imposition of sentences.
  - (d) The documents referred to in (1)(b), (c) and (d) are distributed by the National Office to all regional offices of IRS. Copies are also available at any of the SEC regional or branch offices in the following cities: Atlanta, GA; Miami, FL; Boston, MA; Chicago, IL; Cleveland, OH; Detroit, MI; St. Louis, MO; Denver, CO; Salt Lake City, UT; Fort Worth, TX; Los Angeles, CA;

San Francisco, CA; New York, NY; Seattle, WA; Washington, DC; and Philadelphia, PA.

- (2) Corporate Filings
  - (a) Form 10-Q. Quarterly corporate financial report.
  - (b) Form 10-K. Annual corporate financial report.
  - (c) Form 8-K. Monthly corporate report made upon the occurrence of various key events such as: changes in control of registrant; change in registrant's certifying accountant; and other materially important events.
  - (d) Form 8. Form used to amend other corporate filings.
  - (e) Form 13(d). Filed by stockholders who hold 5 percent or more interest. It should identify acquisition, show where money came from and how ownership interest changed.
  - (f) The documents referred to in (1)(a) and (2) are maintained at SEC's Public Reference Library in Washington, D.C. and can be obtained by written request to the Director, Criminal Investigation Division, Attn: Chief, Operations Branch CP:CI:O.

- (3) Enforcement/Investigative files
  - (a) Corporate documents
  - (b) Documents from third-party sources
  - (c) Witness statements
  - (d) Other appropriate investigatory material
  - (e) Access to SEC's enforcement files can only be gained through a disclosure grant being conferred on IRS by the Commission (SEC). Request for access to these files must be addressed to the Director, Criminal Investigation Division, National Office, Attn: Chief, Operations Branch as indicated in 333.1:(1).

**333.6** (1-18-80)

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**Interstate Commerce Commission Records**

- (1) Section 20(7)(f) of the Interstate Commerce Commission Act prohibits the divulgence of any facts or information which may come to the knowledge of the Commission agent during the course of his official examination or inspection, except by direction of the Commission or by a court or judge thereof. If, however, it is necessary in connection with the examination of the taxpayer's books and records for a special agent to have access to information or review the files of the Commission, a request for such information in the name of the Commissioner of Internal Revenue may be submitted to the Chairman of the Interstate Commerce Commission.

(2) Requests for information should be submitted by the District Director to the Director, Criminal Investigation Division, National Office, Attention: CP:CI:O. The information desired will be submitted through official channels and when obtained referred promptly to the District Director.

**333.7** (1-18-80)

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**Comptroller of Currency (Bank Examiners' Reports)**

(1) National bank examinations are made to determine bank financial positions and to evaluate bank assets. Bank examiners' reports contain information about bank records, loans, and operations.

(2) In view of their purpose and the basis on which they are obtained, reports of national bank examinations and related correspondence and papers are deemed to be of a confidential nature. If it is necessary, in an examination of a taxpayer's books and records, that a special agent have access to information contained in a bank examiners' report, the request should be submitted by the District Director to the Collection Division of the National Office, Attention: CP:C:O. The request should set forth the taxpayer's name and address, the information desired, the reason it is needed, and the intended use thereof. The National Office will address the request to the Comptroller of the Currency.

**334** (1-18-80)

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**Government Records****334.1** (1-18-80)

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**Internal Revenue Service****334.11** (1-18-80)

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**National Computer Center**

The National Computer Center maintains the master file which is a tax record of all known taxpayers. The master file is separated into several categories, some of which are the business master file (BMF), the individual master file (IMF), residual master file (RMF) and the retention register.

**334.111** (1-18-80)

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**The Business Master File**

(1) The Business Master File (BMF) maintained on magnetic tape is a tax record of business taxpayers required by law and regulations

to have Employer Identification Numbers (EIN) as identifying account numbers.

(a) *Design*—The Business Master File is designed to accumulate on tape all data pertaining to the tax liabilities of one taxpayer. The returns filed for each type of tax, the assessments, the debit and credit transactions for each tax account, and a record of all changes made on a tax return are maintained for each taxpayer in the master file.

(b) *Business Taxpayer*—A business taxpayer is a taxpayer conducting a business enterprise, the operations or products of which are subject to Federal taxation.

(c) *BMF Taxes*—The types of taxes processed to the BMF are limited to:

- 1 Employment Taxes (Return Form 940)
- 2 Withholding and FICA Taxes (Return Form 941)
- 3 Corporation Income Taxes (Return Form 1120)
- 4 Excise Taxes (Return Form 720)
- 5 Railroad Retirement Taxes (Return Form CT-1)
- 6 Employment (Household) Taxes (Return Form 942)
- 7 Employment (Agricultural) Taxes (Return Form 943)
- 8 Corporation Income (Small Business) Taxes (Return Form 1120S)
- 9 Fiduciary Income Taxes (Return Form 1041)
- 10 Partnership Income Taxes (Return Form 1065)
- 11 Foreign Corporation Income Tax Return (Return Form 1120F)
- 12 Life Insurance Company Income Tax Return (Return Form 1120L)
- 13 Mutual Insurance Company Income Tax Return (Return Form 1120M)

(d) In addition, tax returns on exempt organizations which have income from investments are processed on BMF.

(e) *BMF Sections*—Each taxpayer's record on the Business Master File, as on the IMF, contains an entity file and a tax module file.

**334.112** (1-18-80)

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**The Individual Master File**

(1) The Individual Master File is a magnetic tape record of all individual income tax filers, in Social Security Number sequence, and is maintained at the National Computer Center. All tax

data and related information pertaining to individual income taxpayers are posted to the Individual Master File so that the file reflects a continuously updated and current record of each taxpayer's account. All settlements with taxpayers are effected through computer processing of the Individual Master File account and the data therein is used for accounting records, for issuance of refund checks, bills or notices, answering inquiries, classifying returns for audit, preparing reports and other matters concerned with the processing and enforcement activities of the Internal Revenue Service.

(a) *Design*—The Individual Master File is designed to accumulate in each taxpayer's account all data pertaining to the income taxes for which the taxpayer is liable. The account is further sectionalized into separate tax periods (tax modules) each reflecting the balance, status, and transactions applicable to the specific tax period. This includes the returns filed, assessments, debit and credit transactions, and all changes made to the filed tax returns. The returns filed include Income Tax Forms 1040, 1040A, 1040NR, 1040C, 1040SS, 1040PR, and Estimated Tax Returns 1040ES. (The Form 1040A was not in use January 1, 1970 through December 31, 1972.) Forms 1040C, 1040SS, and 1040PR posted to the Master File beginning January 1, 1971; Form 1040NR beginning January 1, 1973.

(b) *Taxpayer Accounts*—Each taxpayer account has an entity module and one or more tax modules.

(c) *Entity Module*—The entity module contains data which describes the taxpayer as an entity and which applies to all records of the taxpayer. This entity module contains groups of data including name, address, etc.

(d) *Tax Module*—A tax module contains records of tax liability and accounting information pertaining to the income tax for one tax period. Each tax module contains groups of data including balance due amounts, refund checks sent, and other accounting information relating to a specific tax period.

### 334.113 (1-18-80) 9781 Residual Master File (RMF)

(1) A magnetic tape containing information on taxpayers filing the following:

(a) Special Taxes (Return Form 11, 11B, 11C)

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IR Manual

- (b) Wagering Tax (Return Form 730)
- (c) Highway Use Taxes (Return Form 2290)
- (d) Estate Tax (Return Form 706)
- (e) Gift Taxes (Return 709)

(2) The RMF was merged with the Business Master File as of January, 1979.

### 334.114 (1-18-80) 9781 Retention Register

(1) Contains all entity and tax modules removed from the Master File. The basic criteria for removal of a tax module are:

- (a) a zero module balance;
- (b) no freeze or unsettled conditions present; and
- (c) no activity to the module for 27 months.

### 334.115 (1-18-80) 9781 Transcripts of Account

#### 334.1151 (1-18-80) 9781 Definitions

(1) *Transcript (Computer Generated)*—A machine printout from the National Computer Center that provides master file information on a particular taxpayer's account.

(2) *Transcript (Manually Prepared)*—A typed transcript from a Regional Service Center of a taxpayer's account which is extracted from microfilm or from non-master file section of the Service Center which maintains manual records relating to controlled situations.

### 334.116 (1-18-80) 9781 Requesting Transcripts of Account

See text 3(10)6 for requesting transcripts.

### 334.12 (3-12-82) 9781 Service Center Records

(1) Each region of the Service has at least one service center. The service centers produce microfilm tapes of tax information, by District, pertaining to the taxpayers for each of the districts which they service. Some of the information which is available is as follows:

(a) IMF and BMF name directories (ALPHA tapes). These directories list the names of the taxpayers in alphabetical order, their SSN or EIN, addresses and; in the case of the IMF directory, the SSN of the spouses. These directories are a quick way to determine the SSN or EIN of a taxpayer.

(b) IMF and BMF reference registers. These registers list the filings of tax returns for many periods, the classes of tax involved and the cycle each return was processed by the service center. The listings are in numerical order by SSN or EIN, as the case may be. These registers are important because they furnish the necessary information concerning the cycles during which returns were processed. This is needed in order to research the IMF and BMF accounts registers.

(c) Accounts Register—A weekly microfilm register of accounts information that lists all postings during a particular cycle to an active entity or tax period. It is produced weekly for each district with separate registers for BMF and IMF accounts. Information is in EIN or SSN order. The register is maintained in each District Headquarters Office as well as the Service Center. "Final" cumulative registers are issued every four cycles (weeks) to consolidate transactions occurring in the previous four weeks.

(2) The service centers also produce the master alpha index. This index is the compilation of all information items, open and closed investigations, and other information in which the Criminal Investigation Division may have an interest. The following is a list of "other information":

- (a) Referrals to Criminal Investigation Division.
- (b) Open investigations.
- (c) Currency Transactions Reports (Forms 4789).
- (d) Currency or Monetary Instrument Reports (Forms 4790).
- (e) U.S. Customs Seizure Reports.
- (f) Reports of U.S. Customs Currency Violation Investigations.
- (g) Drug Enforcement Administration Class 1 Information Items.
- (h) Securities Exchange Commission Project Information Items.
- (i) Grand Jury Information Items where there is no 6(e) order.
- (j) Referrals from the questionable refund program.
- (k) Closed Criminal Investigations.

(3) See also IRM 9311.8.

### 334.2 (1-18-80)

9781

#### Disbursing Offices of the U.S. Government Records

(1) U.S. Government checks are issued by disbursing offices of the following services and departments:

- (a) U.S. Army.
- (b) U.S. Air Force.
- (c) U.S. Navy.
- (d) U.S. Marine Corps.
- (e) U.S. Post Office Department.
- (f) U.S. Treasury Department.

(2) The military services and the U.S. Post Office Department make disbursements relating to their own activities, and the Regional Disbursing Officers, Bureau of Accounts, U.S. Treasury Department, make disbursements for all other U.S. Government activities. These disbursing offices are located at major military installations and in a number of large metropolitan areas throughout the nation. In general, they maintain copies of paid vouchers and check listings or similar type records which identify each check issued for goods or services. In addition, the Regional Disbursing Officers, Bureau of Accounts, U.S. Treasury, microfilm all checks prior to issuance. All canceled U.S. Government checks, from whatever source issued, are processed by the Office of the Treasurer of the United States (see text 333.3.)

### 334.3 (3-12-81)

9781

#### Treasurer of the United States Records

### 334.31 (3-12-81)

9781

#### Introduction

Cancelled checks paid by the U.S. Treasury are processed through the Office of the Treasurer of the United States and may be obtained as described below.

### 334.32 (3-12-81)

9781

#### Refund Checks

(1) The district requesting a photocopy of a refund check should contact the Chief, Criminal Investigation Branch at the service center which services the requesting district. The request should include the following information:

- (a) Name of payee (if the name of the payee is not available, the check may be located by



using the payee's Social Security Number or Employer Identification Number);

(b) Social Security Number or Employer Identification Number;

(c) Period and type of tax; and

(d) Amount of check.

(2) The Chief, Criminal Investigation Branch will in turn request a copy of the check through IDRS, in accordance with IRM 3(17)(42)3.(11).

(3) If the check is being considered for use in a trial or a procedure requiring certification, the request for certification should be included in the request.

**334.33** (3-12-81)

9781

**U.S. Treasury Checks Issued for U.S. Government Agencies**

(1) Photocopies of U.S. Treasury checks have to be obtained by initiating a request through the U.S. Government agency which authorized the check.

(2) The authorizing U.S. Government agency has to submit a request for the check photocopy to the particular disbursing office that issued the check. The disbursing office verifies the accuracy of the submitted information and forwards the request via a Form 1180, Request for Stop Payment, to the Bureau of Government Financial Operations, Check Claims Division. The Check Claims Division will obtain the requested check photocopy and forward it to the claimant (requesting party) shown on Form 1180.

(3) The initial request submitted by the authorizing agency must contain the following information:

(a) Name of payee;

(b) Date of check;

(c) Amount of check;

(d) Check number;

(e) Disbursing office symbol;

(f) Photocopy is needed (if certification is necessary include this in the request);

(g) Name and address of the claimant (this should be the special agent's name and office address unless the authorizing agency objects; if the authorizing agency does object, then the special agent should make arrangements with the agency to monitor the request); and

(h) The fact that the check photocopy is urgently needed for a criminal investigation.

(4) When the Check Claims Division receives the Form 1180 from the disbursing office,

Part C of this form will be sent to the claimant. This should be the special agent (see (3)(g) above). Exhibit 300-1 is an example of a completed Form 1180.

(5) If a response is not received within 45 days of the date of the request, shown in Item 1 of Form 1180, the special agent should submit a memorandum with a photocopy of Part C for each check to:

Bureau of Government Financial Operations

Check Claims Division

401 14th Street S.W., Washington, DC 20227

ATTN: Stop Payment Branch

(6) If a follow-up memorandum is initiated, attach requests for no more than three checks to insure more expeditious handling.

(7) The special agent should not make any request directly to the Bureau of Government Financial Operations, Check Claims Division (unless a follow-up to the initial request becomes necessary). The Check Claims Division will not process any check requests except those which originally came through the disbursing office.

**334.34** (3-12-81)

9781

**Obtaining Original U.S. Treasury Checks**

(1) If original U.S. Treasury checks are needed, the following procedure should be followed (original checks will normally take longer to obtain than photocopies since they usually must be retrieved from the Federal Records Center).

(2) Obtain the following information:

(a) Name of payee;

(b) Date of check;

(c) Amount of check;

(d) Check number; and

(e) Disbursing office symbol.

(3) Contact the nearest Secret Service field office or resident agent (see Exhibit 300-4) and complete Secret Service Form (SSF) 1600.

(4) The request should be limited to one original check per SSF 1600, although a number of checks with the same payee may be requested on one SSF 1600.

(5) The Secret Service Special Agent-in-Charge will approve the request and forward it to the Forgery Division.

(6) The original check(s) will be forwarded to the requesting agent through the appropriate Secret Service field office or Resident Agency.

(7) When the original check is no longer needed, it will be returned to the appropriate Secret Service field office or Resident Agency.

**334.4** (1-18-80)

9781

**Bureau of the Public Debt  
Records**

(1) Banking institutions generally will handle subscriptions for United States Securities, but only Federal Reserve Banks and Branches and the Treasury Department are authorized to act as official agencies. The Secretary of the Treasury, through the Bureau of the Public Debt, Division of Transactions and Rulings, Washington, D.C. 20225, conducts transactions in securities after issue and answers inquiries concerning such transactions. However, the agent may find it advantageous to make inquiries of the Federal Reserve Bank and Branches, listed in Exhibit 300-3, which are official agencies for the receipt of securities for transactions after issue, and may be authorized to complete such transactions.

(2) Records of U.S. Savings Bonds (registered bonds) purchased and redeemed. This information can be obtained in the following manner:

(a) Request for information must be in the name of the District Director and addressed to:

Bureau of the Public Debt  
Division of Transactions and Rulings  
200 Third Street  
Parkersburg, WV 26101

(b) The request should contain the following information:

1 the complete name that would be shown first on the bonds, including middle name or initial;

2 all addresses, including street and number, city and state which may be shown on the inscription on the bonds and the years the taxpayer lived at each address;

3 the taxpayer's social security account number, if the request is for information about Series H bonds, or Series E bonds issued on January 1, 1974, and later;

4 the years in which the bonds may have been issued as the issue record constitutes the basic reference. Ordinarily the redemption record can be identified only after the issuance is ascertained; and

5 the series of bonds which may have been purchased. The following schedule shows the dates when the sale of each series began and ended:

Series	Dates
A	March 1935 through December 1935.
B	January 1936 through December 1936.
C	January 1937 through December 1938.
D	January 1939 through April 1941.
E	May 1941 through present, sales continuing.
F	May 1941 through April 1952.
G	May 1941 through April 1952.
H	June 1952 through present, sales continuing.
J	May 1952 through April 1957.
K	May 1952 through April 1957.

6 A statement that the request has been carefully screened and the information requested is the minimum necessary in the case.

(c) See IRM 937(14) concerning interest earned on savings bonds.

**334.5** (1-18-80)

9781

**Bureau of Government Financial Operations**

(1) The Division of Cash Services, Bureau of Government Financial Operations, will notify the Director, Criminal Investigation Division when a person presents \$5,000 or more of mutilated currency for redemption. The Director, Criminal Investigation Division will immediately refer the information to the Chief, Criminal Investigation Division, in the district in which the person requesting the currency redemption resides. The Division of Cash Services will withhold payment in such cases for a period of thirty days from date of notification so that the IRS can determine whether further withholding of payment is desired.

(2) A mutilated currency report shall, immediately upon receipt, be classified, as an information item and screened to determine whether preliminary inquiries should be undertaken by a special agent or whether the information should be forwarded to Examination or Collection activity. Care should be taken that the Collection activity is informed of the report immediately upon its receipt, in order that Collection may exercise any right of offset for outstanding assessment against the taxpayer involved. The service center and/or the National Computer Center should be notified if a valid social security number is available.

(3) It is not contemplated that Criminal investigation will request the Division of Cash Services to withhold payment of mutilated currency beyond the original thirty-day period except in rare or unusual cases. Such cases will generally involve a jeopardy assessment situation where time is an element. Where it is determined that such an unusual situation exists, the Chief, Criminal Investigation Division, with the concurrence of the District Director, will notify the Director, Criminal Investigation Division, National Office, immediately by telegraph or telephone so that the Division of Cash Services may be advised accordingly. If at the time of screening there is no apparent Criminal Investigation, Examination or Collection potential in the matter, it may be closed to file without further action, or disposed of as any information item. No report need be submitted to the Director, Criminal Investigation Division, if it is determined that payment should not be withheld.

(4) When a special agent has information which indicates that a taxpayer has presented mutilated currency for redemption in an amount less than \$5,000, the agent should prepare a request for the Division of Cash Services to search their files. The request should be signed by the Chief with the concurrence of the District Director and mailed directly to:

Bureau of Government Financial Operations  
DCS/BEPA  
Room 126  
Treasury Annex #1  
Washington, D.C. 20226

(5) The request should contain the following information if it is available:

- (a) taxpayer's name and full address;
  - (b) amount of the redemption;
  - (c) approximate date the currency was presented for redemption; and
  - (d) name of the bank where the currency was presented for redemption.
- (6) See also IRM 9376.1.

**334.6** (4-15-82)

9781

**Customs Service****334.61** (4-15-82)

9781

**Customs Records**

(1) The United States Customs Service has authorized Directors of Customs at Headquarters Ports to furnish Internal Revenue officials with information from Customs' records, such as owners' declarations, manifests and other documents relating to the importation of taxable articles. Customs officials have been instructed to immediately forward to the Customs Service for consideration all Service requests for information not covered by prior authorizations. Information obtained from Customs will be treated as being of a confidential nature.

(2) The Customs Service has investigative jurisdiction concerning the enforcement of appropriate sections of Title 31, United States code dealing with currency entering or leaving the United States. Sections 103.23(a), 103.23(b) and 103.25(3) state that when any person transporting or causing transportation or more than \$5,000 of currency or certain monetary instruments at any one time, into or out of the United States, must file a report with the Customs Service on Customs' Form 4790 Report of International Transportation of Currency or Monetary Instruments (CMIR) at the time of departure, mailing or shipping. (See text 335.22).

**334.62** (4-15-82)

9781

**Verification of Award Payments to Customs Service Informants**

(1) In order to protect the identity of informants, it is the policy of the Customs Service to advise such persons that award payments should be reported on income tax returns as "other income", and that, if the source of that income is questioned by the Internal Revenue Service, the informant need state only that the

amount involved was received from the Customs Service for services of a confidential nature and give the name of the Customs officer from whom the award was received.

(2) Upon inquiry from an officer of the Internal Revenue Service, the Customs Service will furnish the name of the informant and the amount of the award. If, during an income tax investigation, a taxpayer should offer that explanation for the source of unidentified income or unreported income, verification should be made only by inquiry of the Supervisory Customs Agent or Customs Agent in Charge by whom the taxpayer claims the payment was made. Whenever practicable, the proper Customs officer should be interviewed personally, without any written communication or other report. Otherwise, the Chief, Criminal Investigation Division, shall prepare a letter to such officer, marked "For Personal Attention Only," requesting verification of the alleged payments.

(3) Special agents shall take all requisite measures to prevent disclosure of any information regarding these award payments. The source of information will not be revealed in reports or otherwise. If necessary, award payments may be identified as "Miscellaneous income (source verified)." Correspondence used to verify such source of income shall be maintained in a secure file under personal control of the Chief.

**334.7** (1-18-80) 9781  
**Secret Service Records**

(1) Records pertaining to counterfeit and forgery cases.

(2) The Criminal Investigation Division cooperates with the Secret Service in the forgery aspect of criminal tax investigations involving possible forgery of United States Government checks (see IRM 9378). Exhibit 300-4 contains a list of local Secret Service Offices. This listing is furnished so that Criminal Investigation Division field personnel can promptly coordinate any forgery violations with the nearest office.

(3) Records pertaining to anonymous letters and background files on persons who write "crank" letters.

**334.8** (9-8-80) 9781  
**Bureau of Alcohol, Tobacco and Firearms Records**

(1) Practically every major case perfected by Bureau of Alcohol, Tobacco and Firearms (BATF) investigators involves individuals who, due to the nature of their illicit enterprises, either have not filed income tax returns or have filed false ones. The evidence in many of these cases not only establishes the violation of the

laws which BATF is charged to enforce, but frequently makes out a prima facie income tax fraud case or at least furnishes some very definite leads to violation of the income tax laws.

(2) Each case in which it appears to the BATF investigator that a suspect has realized substantial profits from illicit operations or possesses excessive net worth will be referred through the Special Agent in Charge to Criminal Investigation on Form 4314, Enforcement Referral—Non-Bureau Violations, for possible income tax or wagering tax investigation.

(3) Each liquor law violator will be asked if he/she filed a Federal income tax return for the previous tax year, and the Special Agent in Charge will submit periodically to Criminal Investigation, either Form 4314 or lists of the names and addresses of persons who apparently have a tax liability and who stated they had not filed. These names should be processed in Criminal Investigation as information items from a Government source.

(4) BATF records which may be of interest are as follows:

(a) Records of distillers, brewers, and persons or firms who manufacture or handle alcohol as a sideline or main product.

(b) Record of inventory of retail liquor dealers and names of suppliers as well as amounts of liquor purchased by brand.

(c) Names and records of known bootleggers.

(d) Reports of investigations.

(e) Records of firearms registration (alphabetical and numerical).

(5) See also IRM 9378.

**334.9** (1-18-80) 9781  
**Federal Bureau of Investigation Records**

(1) Criminal records and fingerprints.

(2) National Stolen Property Index—Government property stolen, including military property.

(3) Nonrestricted information pertaining to criminal offenses.

(4) National Fraudulent Check Index.

(5) Anonymous Letter Index.

**334.(10)** (1-18-80) 9781  
**Drug Enforcement Agency Records**

(1) Record of licensed handlers of narcotics.

(2) Criminal records of users, pushers, and suppliers of narcotics.

**334.(11)** (1-18-80) 9781  
**Immigration and Naturalization Service Records**

(1) Records of all immigrants and aliens.

(2) Lists of passengers and crews on vessels from foreign ports.

(3) Passenger manifests and declarations—ship, date, and point of entry required.

(4) Naturalization records—names of witnesses to naturalization proceedings and people who know the suspect.

(5) Deportation proceedings.

(6) Financial statements of aliens and persons sponsoring their entry.

**334.(12)** (12-7-81) 9781  
**U.S. Postal Service Records**

**334.(12)1** (12-7-81) 9781  
**Addresses of Post Office Box Holders**

U.S. Postal Service regulations authorize disclosure of names, addresses and telephone numbers of post office box holders to a recognized law enforcement agency. Requests for this data must be directed to the Postal Inspector of the area concerned stating that the information is necessary for law enforcement purposes. The requests will be signed by the Chief or Acting Chief, Criminal Investigation Division. Photocopies and originals of applications for post office boxes cannot be obtained from the U.S. Postal Service without a court order.

**334.(12)2** (12-7-81) 9781  
**Forwarding Addresses of Taxpayers and Third Parties**

(1) U.S. Postal Service regulations authorize disclosure of forwarding addresses. Requests for this data may be directed to the Postal Inspector of the area concerned stating that the change of address is required for law enforcement purposes or that the information is required for official business and all other known sources for obtaining the change of address have been exhausted. When forwarding addresses are requested in writing, they should be signed by the Chief, or Acting Chief, Criminal Investigation Division. Further, personal contact by a special agent is not prohibited when that would be more efficient and practical.

(2) A request for copies of change of address cards filed with numerous Post Offices throughout the country should be coordinated with the Postal Inspector in the key district. He/she will obtain copies of the desired documents and furnish them to the special agent. Originals of the change of address cards cannot be obtained from the U.S. Postal Service without a court order.

**334.(12)3** (12-7-81) 9781  
**Photostats of Postal Money Orders**

Where it is necessary to obtain information or photostats of postal money orders, where either the IRS or the Department of the Treasury is the payee or purchaser, in connection with a matter being investigated by Criminal Investigation, the request should be addressed directly to Money Order Division, Postal Data Center, P.O. Box 14965, St. Louis, Missouri, 63182 and should bear the signature of the Chief, Criminal Investigation Division; District Director; ARC (Criminal Investigation); or Director, Criminal Investigation Division. Requests for copies of postal money orders which were purchased by and payable to any other entities must be made through the local U.S. Postal Inspection Service office. Ordinarily, a special agent assigned to a District Director's office should prepare the request for signature of the Chief. Those agents assigned or detailed to the office of the ARC (Criminal Investigation) should prepare the request for the signature of the ARC (Criminal Investigation).

**334.(12)4** (12-7-81) 9781  
**Mail Covers**

(1) U.S. Postal Service regulations which constitute the sole authority and procedure for initiating, processing, placing, and using mail covers are provided in title 39, Code of Federal Regulations, section 233.2; and Part 233.2, *Postal Service Manual*.

(2) The following are U.S. Postal Service definitions relating to mail covers.

(a) "Mail cover" is the process by which a record is made of any data appearing on the outside of any class of mail matter, including checking the contents of any second, third, or fourth class mail matter as now sanctioned by law, in order to obtain information in the interest of protecting the national security, locating a fugitive, or obtaining evidence of commission or attempted commission of a crime.

(b) "Fugitive" is any person who has fled from the United States or any State, territory, the District of Columbia, or possession of the United States, to avoid prosecution for a crime, to avoid punishment for a crime, or to avoid giving testimony in a criminal proceeding.

(c) "Crime," for purposes of these regulations, is any commission of an act or the attempted commission of any act that is punishable by law by imprisonment for a term exceeding one year.

(d) "Law enforcement agent" is any authority of the Federal Government or any authority of a State or local Government one of whose functions is to investigate the commission or attempted commission of acts constituting a crime.

(3) Any data concerning mail covers may at a later time be required to be made available by the U.S. Postal Service to the mail cover subject in a legal proceeding through appropriate discovery procedures.

(4) Regional Commissioners and District Directors are responsible for ensuring that requests for mail covers are made in accordance with established procedures.

(5) All requests by Criminal Investigation Division personnel for mail covers will be signed by the Chief, or Acting Chief, Criminal Investigation Division; addressed to the Postal Inspector in Charge of the postal area involved; and sent directly to the Postal Inspector in Charge, except for the fourth and subsequent renewal requests as provided for in (10) below. A copy of all requests will be forwarded for informational purposes to the ARC (Criminal Investigation.)

(6) Request for mail covers should be made only to locate a fugitive or when there is good reason to believe that a felony has either been committed or attempted. A mail cover should never be requested in a case involving a misdemeanor violation. Whenever such a case has been elevated to a felony, case management records must be updated timely to support any subsequent request for a mail cover.

(7) The requests for mail covers should be made in writing, stating therein which of the purposes specified in (6) above is applicable. It is the policy of the U.S. Postal Service that a separate request will be made for each Post Office which must conduct the mail cover. The mail cover request must also specify, and stipulate:

(a) the identity of each individual or business name to be covered, giving name, address, and ZIP code number;

(b) that an official investigation is in progress;

(c) the Federal statute alleged to have been violated and the criminal penalty, if convicted. Requesters should provide a brief explanation of the statute and the criminal penalty which could be asserted if convicted under that statute. For example; "We are conducting an investigation of Mr. \_\_\_\_\_ for allegedly attempting to evade his and his wife's personal income tax for calendar years 19 \_\_\_\_\_ through

19 \_\_\_\_\_ in violation of Section 7201 of the Internal Revenue Code. Conviction under this statute could result in Mr. \_\_\_\_\_ being imprisoned for not more than five years and/or fined not more than \$10,000 for each of the years for which he is convicted";

(d) the reasonable ground that exists which demonstrates that the mail cover is necessary to locate a fugitive or to obtain information regarding the commission or attempted commission of a felony. This should be detailed enough to enable Postal personnel to form a judgment as to the need for the mail cover (see 334.(12)4:(8)(b)). However, disclosure of return information to the Postal Service must be limited to the extent necessary to obtain the mail cover;

(e) the name and address of any attorney for each person or concern on which a mail cover is requested or that the attorney for each person or concern on which a mail cover is requested is not known (mail cover data excludes matter mailed between the mail cover subject and the known attorney);

(f) that each person or concern on which a mail cover is requested, if not a fugitive, is not under indictment in connection with the matter under investigation;

(g) that if the mail cover is authorized and the subject is indicted for any cause during the mail cover period, the Postal Inspector in Charge will be immediately notified. If the indictment is for an offense that is not part of the CID investigation, the notification should be made in writing and should state that the indictment concerns a matter that is not related to the CID investigation. The notification should request that the mail cover be continued without interruption. If the indictment returned is a sealed indictment in a CID investigation, the Postal Inspector in Charge will be requested to cancel the mail cover. No mention of an indictment will be made to the Postal Inspector in Charge, thus avoiding making an unlawful disclosure by violating the secrecy rules that govern Federal Grand Juries; and

(h) a statement that only first class should be covered, unless it is specifically necessary that other classes of mail be included.

(8) The "reasonable grounds" should be established on each person or concern who is the subject of a mail cover, not only the named subject of the investigation. For instance, a person may be named as the subject of an investigation but a mail cover is necessary on both the subject and his/her spouse (or associate). The request should also explain the necessity for the mail cover on the spouse (or associate).