

(a) A request to include a spouse should include specific comment to provide Postal officials with enough information on which to base authorizing the mail cover. This could include mention, for example, that we learned of a spouse's involvement in the evasion scheme being investigated from an informant or other third party witness(es), or through an analysis of bank and other financial records. It is not sufficient to say that "Because the taxpayer is married, we have reason to expect that the spouse may hold assets. . .", or that "Based on our experience in other investigations, we anticipate that the spouse. . .".

(b) The request should stipulate and specify the necessity for the requested mail cover, such as:

- 1 the taxpayer uses aliases;
- 2 the taxpayer is known to use nominee ownership in bank accounts or assets;
- 3 the mail cover is expected to uncover assets, liabilities and/or expenditures; and
- 4 the mail cover should reveal the taxpayer's contacts or clientele, etc.

(c) Mail covers are usually requested on a stated individual or concern at a given address. Mail arriving for other persons or concerns who also happen to receive mail at the address are not included in the mail cover. In cases where the investigation requires a cover on mail addressed to the known occupant of a particular address and any fictitious names that may be used by the occupant, the following must also be included in the request:

- 1 a statement establishing the necessity for covering all mail intended for delivery at the particular address.
- 2 a statement that it is known through investigation that only the subject of the cover resides and receives mail at the address.
- 3 a statement that all mail received for delivery at the address is intended for the subject of the mail cover. *If persons other than the subject of the mail cover reside at the address, a list of their names must be furnished, and all mail addressed to them is to be excluded from the cover.*

(9) Requests for mail covers should be limited to not more than 30 days and cancelled if the information sought is obtained from other sources prior to the expiration of the period. Cancellations should be sent by the originating office and addressed to the Postal Inspector in Charge of the postal area involved. A request for renewal of a mail cover, when warranted, should be made in accordance with the proce-

dures set forth in (5), (6), and (7) above. In those few cases wherein it may be necessary to extend the mail cover beyond 120 days (three renewals), the fourth renewal request and all subsequent renewals must be submitted to the Director, Criminal Investigation Division, for approval, together with a memorandum giving detailed reasons as to the need to continue the mail cover.

(10) All Forms 2009, reporting mail cover information, received from the Postal Inspection Service must be returned within 60 days to the Postal Inspection Service official from whom received. Mail cover documents are the property of the U.S. Postal Service and are loaned with the understanding they will be treated confidentially. Reproduction of mail cover documents is prohibited.

### 334.(13) (11-7-80)

9781

#### Federal Aviation Administration (FAA) Records

(1) This agency maintains records reflecting the chain of ownership of all civil aircraft in the United States. These records include documents relative to their manufacture, sale (sales contracts, bills of sale, mortgages, liens) and transfer, inspection and modification.

- (2) This information is maintained at:
- Federal Aviation Administration  
Aeronautical Center-ACC-90  
P.O. Box 25082  
Oklahoma City, OK 73125

(3) Information can be obtained from FAA as follows:

(a) Request requiring no written response or documentation—When a special agent needs routine information that does not require a copy or extensive research, it can be obtained by a telephone request to the Investigations and Security Division, Oklahoma City, OK, telephone number FTS 749-2522. The special agent should be prepared to furnish the following information:

- 1 The special agent's identity including name, division and office location.
- 2 Type of investigation—civil or criminal.
- 3 The aircraft N-Registration Number if the owner of an airplane is desired.
- 4 The name, date of birth, and social security number are needed to obtain a listing of aircraft registered in an individual's name.

(b) Request for regular and certified copies of documents—Requests of this nature and requests requiring extensive research should be forwarded by collateral request to the Criminal Investigation Division, Oklahoma City District.

**334.(14)** (1-18-80)

9781

**Department of Defense Records**

(1) Data concerning the pay, dependents, allotment accounts, soldier's deposits, withholding statements (Forms W-2), and any other financial information relative to military personnel is available at one of the following offices, depending upon the branch of the Armed Forces to which the individual was or is presently attached:

(a) **ARMY:**

United States Army Finance Center  
Indianapolis, 46249

Request to include: Complete name and Army serial number.

(b) **AIR FORCE:**

Air Force Finance Center  
3800 York Street  
Denver, Colorado 80205

(c) **NAVY:**

Director, Bureau of Supplies and Accounts  
Department of the Navy  
13th and Euclid Streets  
Cleveland, Ohio 44115

(2) Requests for information from the sources in (1) above should be forwarded through normal channels to the District Director of Internal Revenue of the area in which the respective finance center is located. It is important that the taxpayer be adequately identified, preferably by name, address, and military serial number. However, if the serial number is unknown or cannot be furnished, the data may be secured if the inquiry includes the serviceman's full name, date of birth, and places of induction and/or discharge from the service.

(3) Addresses of military personnel:

(a) Form 2223, Request for Address of Military Personnel, should be used to obtain from the records of the military services the current or last known address of a taxpayer who is a member of, or who has been recently separated from, the Armed Forces. All Forms 2223 should be carefully prepared. The full name of the taxpayer should be entered accurately, to-

gether with his preservice address and serial number, if known. If available, the last known military address of the taxpayer and the latest date such address was known to be current should be furnished. The correct mailing addresses for the military service branches are printed on the face of Form 2223 and the address corresponding to the member's Branch of service *must* be entered in the space provided therefor. Each Form 2223 should be examined prior to mailing to make certain that the return address of the requester has been inserted. Otherwise, even though a current address may be available, the military service Branch will be unable to return the completed Form 2223.

(b) Many of the Forms 2223 will have to be forwarded by the military service branch concerned to various record centers located throughout the United States. Therefore, no followup inquiry should be made within ninety days from the date of the original request. If, after ninety days, it is found that a followup inquiry is necessary, a second Form 2223 should be prepared and mailed to the proper military service branch. However, the second Form 2223 should not be identified as a followup request or as a second request, and no reference should be made to the original Form 2223.

(4) Data concerning the personal and medical history of former Army personnel (discharged subsequent to 1912) and former Navy and Marine personnel are located at: Military Personnel Records Center, GSA, 9700 Page Boulevard, St. Louis, Missouri 63132. Requests should include: Complete name, including middle name; Service Serial Number; date and place of birth; dates of service, military organizations or the name of the individual's next of kin.

(5) Records of contracts and all original vouchers covering payments made to persons and firms dealing with the U.S. Air Force are retained at:

U.S. Air Force Accounting and Finance Center  
AFO—Accounts and Mail Branch  
3800 York Street  
Denver, Colorado 80205

(a) Normally, requests for such information should be made by collateral to the Denver District.

**334.(15)** (1-18-80) 9781  
**Government Surplus Property Sales**

The Director, Directorate of Marketing, Defense Supply Agency, Defense Logistics Services Centers, Federal Center, Battle Creek, Michigan 49061, maintains a master record of all Government surplus items sold through local defense surplus sales offices in the United States. The Center will provide computer print-outs from July 1, 1965, forward concerning surplus sales and will identify the local sales office which sold the property and which maintains the original documents relating to the sales.

**334.(16)** (12-7-81) 9781  
**Defense Investigative Service (DIS)**

Their records include case files of individuals who have undergone investigation, both criminal and background, by the Army (Intelligence, CID, etc), Navy (NIS, etc.), Air Force (AFOSI, etc.), and the Department of Defense. Requests for information from DIS files should be forwarded to the Director, Criminal Investigation Division, National Office, Attn: CP:Cl:O.

**334.(17)** (1-18-80) 9781  
**Federal Housing Administration Records**

- (1) Complete financial information.
- (2) Statements of net worth and earnings.

**334.(18)** (1-18-80) 9781  
**United States Coast Guard Records**

- (1) Records of persons serving on United States ships in any capacity.
- (2) Records of vessels equipped with permanently installed motors.
- (3) Records of vessels over 16 feet equipped with detachable motors.

**334.(19)** (1-18-80) 9781  
**Veterans' Administration Records**

(1) Records of loans, tuition payments, insurance payments and nonrestrictive medical data related to disability pensions are available at Veterans' Administration Regional Offices located in a number of large metropolitan areas throughout the country. This information, including photostats, may be obtained by direct mail request to the appropriate regional office or, if necessary, by collateral request.

- (2) All requests should include a statement covering the need and intended use of the information. The veteran should be clearly identified and, if available, the following information should be furnished about him:
- (a) V.A. claim number.
  - (b) Date of birth.
  - (c) Branch of service.
  - (d) Dates of enlistment and discharge.

**334.(20)** (9-4-81) 9781  
**Federal Courts Records**

- (1) Records of civil and criminal cases.
- (2) Records of parole and probation officers.
- (3) Records of U.S. Marshall, and U.S. Magistrate.

(4) Records of a bankruptcy proceeding except transcripts and summaries of testimony compelled pursuant to a grant of immunity. Effective October 1, 1979, the Bankruptcy Reform Act of 1978 (11 U.S.C. 344) provides that debtors, creditors and other witnesses may be granted immunity under Part V, Title 18. Section 727(a)(6) provides for denial of a discharge in bankruptcy if the debtor refuses to testify after a grant of immunity has been given. A person who testifies without a formal grant of immunity waives his/her Fifth Amendment rights against self-incrimination and the testimony could be used in a subsequent proceeding. Restrictions on the acquisition and use of information obtained under a grant of immunity are contained in IRM 937(17). Bankruptcy cases commenced prior to October 1, 1979 are governed by 11 U.S.C. 25(a)(10) which provides immunity for transcripts and summaries of testimony given by a bankrupt. Under both bankruptcy law provisions the investigating agents may use the public record of the bankruptcy as a starting point for net worth purposes. If 11 U.S.C. 25(a)(10) is applicable, agents must not examine testimony or even transcripts from the referee in order to avoid the burden of proving the absence of tainted evidence.

**334.(21)** (1-18-80) 9781  
**Federal Records Center**

- (1) Data concerning former Government employees are on file at:
- (a) The Federal Records Center, G.S.A. (Civilian Personnel Records)  
111 Winnebago Street  
St. Louis, MO 63118.
  - (b) Requests for information from such files should be prepared on GSA Standard Form 127, Request for Official Personnel Folder, and mailed direct to the Federal Records Center at St. Louis, Missouri.

**334.(22)** (1-18-80) 9781  
**Federal Reserve Bank Records**

Records of issue of United States Treasury Bonds. See Exhibit 300-3 for a list of these banks.

**334.(23)** (1-18-80) 9781  
**Railroad Retirement Board Records**

No information will be made available by this Agency. (See Sec. 262.16, Title 20, Code of Federal Regulations)

**334.(24)** (3-12-82)

9781

**El Paso Intelligence Center (EPIC) Records.**

(1) EPIC is a multi-agency operation, basically oriented towards narcotics traffickers, gun smugglers and alien smugglers, that collects, processes and disseminates information in support of ongoing field investigations. EPIC has signed agreements with 48 states, including both state and local agencies, in addition to having representatives from the participating Federal agencies. EPIC has access (terminals) to all major Federal criminal data bases. Inquiries should be limited to Project 21 (narcotics related) cases/files and/or smugglers of funds, other contraband and aliens.

(2) EPIC's "Watch", which is operational 24 hours a day, seven days a week, handles queries from field investigators and provides an immediate response. The "Watch" also handles "Lookout" requests regarding the movements of individuals, aircraft, or vessels in support of ongoing investigations. Lookouts are placed for 90 days, or increments of 1 year. A lookout should be cancelled when it has served its purpose. The "Watch" does not originate lookouts but rather monitors:

(a) INS Lookouts (including Treasury Enforcement Communications (TECS)

(b) TECS Lookouts

(c) Aircraft Lookouts, TECS portion

(d) Aircraft Lookouts, Federal Aviation Administration (FAA) portion

(e) Vessel Lookouts, Coast Guard portion

(f) Vessel Lookouts, TECS portion.

(3) EPIC's Analysis Section studies "Watch" queries, "lookouts", data base information, and other information fed into EPIC, from which it prepares "predictive" intelligence on activities and organizations. This information is subsequently provided to the field through special reports and the weekly brief.

(4) The EPIC Intelligence Terminal (IT) is an internal computer system unique to EPIC and the primary repository for all the "Watch" activity and other investigative and intelligence data fed into EPIC. The information in the data base is comprised of individuals, activities, significant events, associations among individuals and/or activities, aircraft, vessels, observations, and both foreign and domestic movements of individuals, aircraft, and vessels. The EPIC IT system is chronological and provides the name, agency, and telephone number of each investigator having expressed an interest in, or having input data regarding, a subject. EPIC has current Federal Aviation Administration (FAA) aircraft registration information (microfiche) and current United States Coast Guard vessel reg-

istration. The IT system allows retrieval of information by an individual's name, a vessel's name or an aircraft N (tail) number. These aircraft and vessel records would not be in an admissible form for use as evidence but would, in most instances, provide leads regarding the ownership, whether foreign or domestic, of that particular asset.

(5) Integrated Combined Systems (ICS) is an Immigration and Naturalization Service (INS) Manual System located at EPIC which consists of three parts, as follows:

(a) *INS Aircraft Arrival Inspection Reports (Form I92A)*. The I92A file is a manual index of private aircraft (U.S. and foreign registered) arriving in the United States from foreign countries. The I92A index overlaps the Treasury Enforcement Communications System's (TECS) private aircraft information (PAIRS), but is a more comprehensive system of records and contains significantly more data. The I92A is indexed and cross-indexed by the aircraft N (tail) number and the pilot's name. The system cannot be queried by passengers, aircraft owners, or points of origin. I92A information is valuable in establishing conspiracies, showing travel patterns and associates, and identifying aircraft ownership. The I92A files are available at EPIC for the current year and the preceding two years. EPIC also has access to an additional two years of I92A information through INS. INS at EPIC can provide certified photocopies of the I92A's and an appropriate witness for evidentiary purposes. The Form I92A includes:

1 Aircraft N (tail) number, make, model and color.

2 Pilot's name, date of birth (DOB), and address.

3 Aircraft owner's name and address.

4 Country and airport (generally the city) of departure.

5 Airport of arrival in the United States, arrival time and date, and the name of the INS/ U.S. Customs Inspector.

6 Listing of passengers on the aircraft (sometimes associated with a DOB).

(b) *INS Index of known alien smugglers.*

(c) *INS Index of various schemes involving fraudulent documents and false claims to U.S. citizenship.*

(d) The INS Indexes in (b) and (c) above can be queried by:

1 Name and DOB of smuggler

2 Name on authentic documents used by imposter

3 Imposter's name

4 Supplier of documents

5 Name of user of fraudulent documents

6 Suspect individual or attorney who may have filed fraudulent birth records.

**334.(24)**

MT 9781-31

(6) All initial inquiries of EPIC should be directed to the "Watch" at FTS 572-2942. Give your title, name and agency. In order to protect the integrity of EPIC information, IRS will provide EPIC an alphabetical listing of Special Agents, updated every six months. Your name must appear on this list before EPIC will respond to your inquiry. No more than five inquiries (names, aircraft, vessels, or combinations thereof) should be directed to the "Watch" at one time. The "Watch" will not provide any written/hard copy reporting. If an agent determines that a written or documented response is needed, he/she should contact the IRS Representative at FTS 572-7255. Agents submitting voluminous requests should have Narcotics and Dangerous Drug (NADDIS) queries from local DEA offices and TECS queries from the local U.S. Customs or IRS Service Center offices completed prior to forwarding their EPIC requests. Voluminous requests should be submitted in writing to the IRS Representative at the following address:

EL PASO INTELLIGENCE CENTER  
2211 East Missouri  
El Paso, TX 79903  
Attn: IRS Representative

(7) In order to place a "lookout" through EPIC, you must furnish the following information to the "Watch".

- (a) Your identity
- (b) Agency
- (c) Case number
- (d) Your FTS phone number
- (e) Your home phone number
- (f) Identity and phone numbers of an alternate agent
- (g) On a "hit" of your lookout, EPIC will make every effort to contact the requesting agent, the alternate, or a member of his/her agency immediately.

**334.(25)** (1-18-80) 9781  
**Import-Export Bank Records**

This bank loans funds to foreign countries and businesses to buy goods from U.S. companies. It is located at 811 Vermont Avenue, N.W., Washington, D.C. The borrower can obtain up to 50 percent of the purchase price of the goods being acquired. The selling company must fill out and submit to the bank a supplier certificate. Included in this certificate is a required statement as to commissions paid, especially in the foreign country to foreign sales "representatives" or "agents."

**334.(26)** (1-18-80) 9781  
**Securities Information Center Records**

The Securities Information Center (SIC) is located in Wellesley Hills, Massachusetts. It is operated by IteI Corporation under contract with the Securities and Exchange Commission. All banks and brokerage houses, etc. that receive bad securities are required to report this

information to SIC. They are also required to run a check with SIC if they receive \$10,000 or more in securities. Information is recorded as of October 1977.

**334.(27)** (1-18-80) 9781  
**Department of Health Education and Welfare (HEW) Records**

HEW records contain information relating to payments made to physicians receiving payments from Medicare and Medicaid programs.

**335** (9-4-81) 9781  
**Treasury Enforcement Communications System (TECS)**

**335.1** (9-4-81) 9781  
**General**

The Treasury Enforcement Communications System (TECS) is a computerized information system designed to identify individuals and businesses involved or suspected or involvement in violation of Federal law. It is also an enforcement communications system permitting instantaneous message transmittal between field terminals and between Treasury law enforcement field offices and their National Offices. TECS also provides the capability for direct inquiry to the FBI's National Crime Information Center (NCIC). In addition, the National Law Enforcement Telecommunications System (NLETS) provides the capability of communicating directly with State and local law enforcement agencies through TECS terminals. NLETS also provides direct access to State motor vehicle department files, most of which provide automated response.

**335.2** (9-4-81) 9781  
**Information Available from TECS**

**335.21** (9-4-81) 9781  
**General**

(1) Individual records available from the TECS data base include the following:

- (a) U.S. Customs Service (General TECS Files):
  - 1 fugitives;
  - 2 known and suspected narcotics traffickers;
  - 3 vehicles, aircraft and vessels known or suspected to be utilized in smuggling activities;
  - 4 known and suspected business entities involved in or related to smuggling activities;
  - 5 individuals known and suspected to be involved in organized crime and racketeering;

(b) U.S. Customs Service (Financial Information Data Base):

- 1 Since 1977 U.S. Customs and IRS have jointly staffed a Reports Analysis Unit

(RAU) which provides information via TECS as follows:

- a Currency Transaction Report (CTR), Form 4789 (see text 338.2);
- b Report of International Transportation of Currency or Monetary Instruments (CMIR), Customs Form 4790 (see text 335.22); and
- c Report of Foreign Bank and Financial Accounts (FBA), Treasury Form 90-22.1 (see text 335.23).

(c) Bureau of Alcohol, Tobacco and Firearms;

- 1 fugitives;
- 2 known and suspected violators of laws falling within the jurisdiction of BATF; and
- 3 felons and dishonorably discharged veterans who have requested relief to own firearms and/or explosives under the Gun Control Act of 1968.

(d) IRS—Inspection

- 1 fugitives; and
- 2 arrested subjects

(e) IRS—Criminal Investigation Division

- 1 fugitives; and
- 2 Certain nonresident delinquent taxpayers (see IRM 937(16).2).

### 335.22 (9-4-81)

9781

#### **Report of International Transportation of Currency or Monetary Instruments (CMIR), Customs Form 4790**

(1) The Currency and Monetary Instrument Reporting file contains a record of every individual who has filed a Customs Form 4790, Report of International Transportation of Currency or Monetary Instruments (CMIR). This form is required to be filed by each person who physically transports, mails, or ships, or causes to be physically transported, mailed, shipped or received currency or other monetary instruments in an aggregate amount exceeding \$5,000 on any one occasion from the United States to any place outside the United States, or into the United States from any place outside the United States. A transfer of funds through normal banking procedures which does not involve the physical transportation of Currency or Monetary Instruments is not required to be reported.

(2) If a TECS query results in a positive response, information contained on the CMIR will be received. If it becomes necessary to obtain a copy of the CMIR, a request which includes the Reports Control Number (RCN), should be directed to the Chief, Criminal Investigation Branch of your service center. The Chief, CIB, utilizing TECS, will request a copy of the CMIR from the U.S. Customs Service.

### 335.21

MT 9781-31

### 335.23 (9-4-81)

9781

#### **Report of Foreign Bank and Financial Accounts (FBA), Treasury Form 90-22.1**

(1) Foreign Bank Account files contain a record of individuals who have submitted Treasury Form 90-22.1, Report of Foreign Bank and Financial Accounts (FBA). Treasury Form 90-22.1 is generally required if an individual has a financial interest in or authority, signatory or otherwise, over one or more bank accounts, securities accounts or other financial accounts in a foreign country, when such account(s) have an aggregate value in excess of \$1,000. If a TECS query results in a positive response, the name, address, SSN or EIN of the subject and a microfiche number will be received.

(2) If it becomes necessary to obtain a copy of a Treasury Form 90-22.1, a request should be directed to the Chief, Criminal Investigation Branch of your service center. The request should include the microfiche number of all forms requested. The Chief, CIB, utilizing TECS, will request a copy of the FBA from the U.S. Customs Service.

### 335.3 (9-4-81)

9781

#### **Records Accessible Through TECS**

(1) Other records accessible through TECS include the following:

(a) The National Crime Information Center (NCIC), operated by the FBI, contains records on wanted persons, vehicles, license plates, guns, articles, securities and boats which have been stolen, and computerized criminal histories (CCH-Summary police "rap sheets".) TECS has an interface with NCIC permitting entry and instantaneous retrieval of NCIC records.

(b) The National Law Enforcement Telecommunications System (NLETS) links the law enforcement agencies across the U.S. with the TECS system. This automated message switching computer is located in Phoenix, Arizona. From TECS secondary terminals NLETS queries can be made for:

1 Vehicle registration information (RQ)—license plate number, year and vehicle type; or vehicle ID number, vehicle make and vehicle year should be used.

2 Drivers license information (DQ)—name, date of birth (dob), race and sex; or drivers license number must be used.

3 State criminal history record information (CQ).

4 All states will provide driver's license (DQ) and vehicle registration (RQ) information from motor vehicle files; however, the files of all states are not automated. Responses from states with automated files should be received in a matter of seconds after a query. The (RQ) after the state code indicates that only registration checks are automated, e.g., Alaska (AK)

(RQ). The following states (including Alaska (AK) (RQ)) are automated:

Alabama (AL)	Maryland (MD)
Arizona (AZ) (RQ)	Michigan (MI)
Arkansas (AR)	Minnesota (MN)
Colorado (CO)	Mississippi (MS)
Connecticut (CT)	Missouri (MO)
District of Columbia (DC)	Montana (MT)
Georgia (GA)	Nebraska (NB)
Idaho (ID) (DQ)	New Jersey (NJ)
Illinois (IL)	New York (NY)
Indiana (IN)	North Carolina (NC)
Iowa (IA)	North Dakota (ND)
Kansas (KS)	Ohio (OH)
Kentucky (KY)	Oklahoma (OK)
Pennsylvania (PA)	South Carolina (SC)
South Dakota (SD)	Tennessee (TN)
Texas (TX)	Utah (UT)
Vermont (VT)	Virginia (VA)
West Virginia (WV)	Wisconsin (WI)
Wyoming (WY)	

5 If the need arises, most States will also respond to inquiries for current road and weather information.

### 335.4 (9-4-81) 9781

#### Types of TECS Queries

(1) The following are types of queries that might be beneficial in IRS enforcement efforts:

(a) *Information Item Evaluation (service centers)*—If a tax-related information item appears to have criminal investigative potential, queries should be made to provide further evaluative information. The response (hard copy printout) will be associated with the Information Item when it is forwarded to the appropriate district office for final evaluation. For this purpose the following queries could be useful:

1 TECS—to determine whether other Treasury agencies have ongoing or closed investigations or other information which might have tax consequences.

2 RAU—Financial information files—To determine whether financial documents have been filed which might have tax consequences.

3 NCIC and State and local criminal history files—To determine criminal history for later use in preparation of prosecution or withdrawal reports.

(b) *Open Investigation (districts)*—TECS may be queried to determine if the subject of an investigation is or may have been, the subject of an investigation by another Treasury agency. TECS may be useful in establishing a contact point within the other agency from whom available tax-related information can be requested. This action will also serve to prevent jeopardizing ongoing investigations and duplication of effort. The financial information files (RAU) should be queried periodically to determine recent filing of financial reports and should be queried each time a new identifier or bank account number is obtained relating to the subject of an investigation.

(c) *Associates*—TECS entries often contain information which may help to identify associates of the subject, and a simple query may produce a number of associates.

(d) *Motor Vehicle Information*—TECS, via NLETS, provides direct access to State motor vehicle departments (see text 335.3). Except where direct telephone access to the State agency is available without charge, motor vehicle or driver's license queries should be made through TECS, especially where State files are automated.

(e) *Aircraft Information*—The Customs Service can routinely check small aircraft traffic coming into the country; therefore, TECS may be queried by the local Customs office to confirm such activity by a taxpayer if tax-related.

### 335.5 (9-4-81) 9781

#### Requesting TECS Queries

(1) Requests to the Chief, Criminal Investigation Branch, for TECS queries may be made by memorandum; by use of Form 5523, TECS Query Request; or by telephone. The Chief, CIB will not release TECS information requested by telephone until he/she is satisfied as to the identity of the caller (such as by telephone callback).

(2) The Chief, CIB is not required to maintain a log of queries nor retain a copy of the requests.

### 335.6 (9-4-81) 9781

#### Fugitive Entries

(1) The following procedures will be followed when requesting an entry to be made to TECS or NCIC regarding a fugitive.

(a) All fugitive entries will be made by the CID, National Office. When it is determined that an individual has become a fugitive, a written request should be submitted to the Director, CID, Attention: CP:CI:O, to request an entry be made in TECS and NCIC. If the taxpayer is charged with a felony, the memorandum should also request the issuance of a Wanted Circular per IRM 9377.1:(2). In urgent situations, the memorandum may be faxed to the National Office. The memorandum should contain the following information to the extent available:

- 1 name and case number;
- 2 alias;
- 3 race;
- 4 sex;
- 5 height
- 6 weight;
- 7 color of hair;
- 8 color of eyes;
- 9 description of any identifying scars, marks and tattoos;
- 10 date of birth;
- 11 place of birth;
- 12 Social Security Number;
- 13 passport number;
- 14 last known address;
- 15 nationality;
- 16 if a naturalized U.S. citizen, date, place, and certificate number;

- 17 occupation;
- 18 criminal violation with which subject is charged;
- 19 date of warrant;
- 20 warrant number;
- 21 type of warrant—Bench, Magistrate, etc.;
- 22 agency holding warrant—U.S. Marshal, IRS—Criminal Investigation, etc.;
- 23 any information as to whether the subject is considered dangerous, is known to own or currently possess firearms, has suicidal tendencies, or has previously escaped custody;
- 24 driver's license number, year of expiration and State issued;
- 25 license number of vehicle, aircraft or vessel subject owns or is known to use, including year and State;
- 26 description of vehicle, aircraft or vessel subject owns or is known to use;
- 27 associates of subject;
- 28 FBI number;
- 29 name and telephone number of CID personnel to contact when subject is apprehended. If uncertain, the office telephone number and the title—Chief, Criminal Investigation of the requesting district will be used.

(b) The above procedure should also be followed for requesting modifications.

(2) Periodically, the TECS Data Center will mail verification forms to those districts which have generated entries into TECS with regard to fugitives as required in text 335.6:(1). It is very important that the Chief, CID have these forms carefully checked to determine the current validity of the information and make appropriate corrections if necessary. This review is especially important for those items of information which are subject to periodic changes, such as automobile license number. After the form has been reviewed and necessary corrections made, the form will be returned to the Director, Criminal Investigation Division, Attn: CP:CI:O, within five days of receipt (copy to the regional office is optional).

(3) When a fugitive has been apprehended, or for any other reason the Chief, CID, wishes to delete the entry in TECS and NCIC, the National Office, Chief, Operations Branch, should be contacted immediately at FTS 566-6451 to request cancellation of the entry in TECS and NCIC. This telephonic request should be followed by written confirmation, and if the taxpayer was charged with a felony, the memorandum should also request the cancellation of the Wanted Circular (see IRM 9377.1:(9)).

**335.7** (9-4-81)

9781

### Other TECS Functions

(1) Other functions of TECS are as follows:

(a) Telephone Analysis System (TELAN) is a computerized service available to TECS users for the purpose of analyzing telephone toll data.

1 Requests for the use of Telephone Analysis System (TELAN) should be forwarded by memorandum from the Chief, Criminal Investigation Division, through normal channels to the Director, Criminal Investigation Division, Attn: CP:CI:O.

2 The request should include the following:

a telephone toll information which is to be analyzed by the computer;

b date the telephone data submitted is needed;

c date the case comes before the grand jury or the court; and

d whether the request is priority or urgent.

3 Priority or urgent requests will be expedited and other TELAN requests will be processed in the order in which received, and as resources and time allow.

4 The computer will generate a printout, listing the data in three sequences: Primary phone number, date, receiving phone number; receiving phone number, date, primary phone number; and date, primary phone number, receiving phone number. The computer will also generate a listing, if applicable, of those phone numbers submitted by the Service which have also been submitted by another agency. The listing will indicate the name of the other agency and the case number.

(b) Customs Service terminals located at land-border crossings along the Canadian and Mexican borders, and at key ports of entry at seaports and international airports, provide the capability of querying number plates and names of passengers clearing Customs at such points. These queries are especially helpful in the apprehension of fugitives.

**335.8** (4-15-82)

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### New Applications/Uses

While new applications and uses for TECS are encouraged, especially those which would increase effectiveness and efficiency, it must be emphasized that absolutely no entries are authorized beyond those described in the above procedures. Any new uses or applications must first be approved by the Director, Criminal Investigation Division.

**336** (1-18-80)

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**State, County, and Municipal Government Records**

- (1) Sale and transfer of property.
- (2) Mortgages and releases.
- (3) Judgments, garnishments, chattel mortgages and other liens.
- (4) Conditional sales contracts.
- (5) Births, deaths, marriages, and divorces.
- (6) Change of name.
- (7) Auto licenses, transfers, and sales of vehicles.
- (8) Drivers' licenses.
- (9) Hunting and fishing licenses.
- (10) Occupancy and business privilege licenses.
- (11) Building and other permits.
- (12) Police and sheriff records of arrests and commitments.
- (13) Court records of civil and criminal cases.
- (14) Parole officers' and probation departments' files.
- (15) Registration of corporate entities and annual reports.
- (16) Registration of noncorporate business entities.
- (17) Fictitious names index.
- (18) School and voter registrations.
- (19) Professional registrations.
- (20) State income tax returns.
- (21) Personal property tax returns.
- (22) Real estate tax payments.
- (23) Inheritance and gift tax returns.
- (24) Wills.
- (25) Letters of administration.
- (26) Inventories of estates.
- (27) Welfare agency records.
- (28) Workmen's compensation files.
- (29) Bids, purchase orders, contracts and warrants for payment.
- (30) Civil Service applications.
- (31) Minutes of board and agency proceedings.
- (32) Public utilities' records.
- (33) Health departments' records.
- (34) State Unemployment Compensation records.

**337** (1-18-80)

9781

**Records and Information from U.S. Possessions and From Foreign Countries****337.1** (5-9-80)

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**Office Of International Operations**

The office of International Operations has the responsibility to make inquiries in foreign coun-

tries. If the Taxpayer resides abroad and it is evident that most of the investigation would be conducted abroad, the case should be referred to the Office of International Operations for investigation. If the taxpayer resides within the United States and it is evident that most of the investigation would be conducted within the United States, the case should be referred to the appropriate district office for assignment to a special agent. Where there is a doubt as to the jurisdiction of a particular case because of unknown factors concerning residence or the extent of the investigation to be made abroad, a memorandum setting forth all of the pertinent details should be submitted by the Chief, Criminal Investigation Division, with the concurrence of the District Director, through normal channels to the Director, Criminal Investigation Division, National Office, who will coordinate the matter with the district involved or with the Office of International Operations, as appropriate, and assist in determining jurisdiction. The Office of International Operations has been delegated authority to perform those functions vested in the Secretary or his/her delegate by the Internal Revenue Code of 1954 which may be performed by a District Director in administering the United States internal revenue laws in the Panama Canal Zone, Puerto Rico, and the Virgin Islands. See also IRM 9123:(5).

**337.2** (1-18-80)

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**Information From Puerto Rico and the Virgin Islands**

Requests for information from Puerto Rico and the Virgin Islands will be handled as collateral requests as provided in IRM 9264.1. Such requests will be forwarded to: Director, Office of International Operations, Attention: Chief, Criminal Investigation Division, CP:OIO:7. See also IRM 9264.3

**337.3** (4-15-82)

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**Information from Foreign Countries—General**

(1) Tax and related information may be obtained by the Foreign Operations District from sources within foreign countries, embassies or consulates of foreign countries, and United States possessions through:

(a) Collateral or other investigations conducted by:

1 Personnel of the Foreign Operations District permanently stationed or temporarily detailed abroad, or

2 Special Agents and other personnel of the Foreign Operations District in Washington, D.C., or

3 Other Service personnel temporarily detailed to the Foreign Operations District for overseas assignment.

(b) Special investigations conducted for their offices by other Service personnel temporarily detailed abroad either under the supervision of, or with the concurrence of, the Director, Foreign Operations District.

(c) Collateral or special investigations made for the Service by other government agencies such as the Customs Service, the Department of State, or Military Services.

(d) Requests directed through prescribed channels to the tax authorities of certain foreign governments, pursuant to provisions of tax treaties.

(2) Requests for information to be obtained in: foreign countries; or from embassies and consulates of foreign governments in the United States outside the Washington, D.C. area; and requests to interview officials located outside the Washington, D.C. area who appear to have diplomatic status will be submitted in triplicate to the Director, Foreign Operations District, Attention: Chief, Foreign Programs Division, by the Chief, Criminal Investigation Division. A copy of each such request will be forwarded to the Assistant Commissioner (CI), Attn. OP:CI:O. The Director, Foreign Operations District will transmit the reply or report direct to the Chief, Criminal Investigation Division requesting the information and furnish a copy to the Assistant Commissioner (CI), Attention: OP:CI:O

(3) Requests for information from embassies and consulates of foreign governments in the Washington, D.C. area, and requests to interview officials in the Washington, D.C. area who have or appear to have diplomatic status will be submitted in triplicate to the Director, Foreign Operations District, Attention: Chief, Criminal Investigation Division, by the Chief, Criminal Investigation Division of the inquiring district. A copy of each such request will be forwarded by the inquiring district to the Assistant Commissioner (CI), Attention: OP:CI:O. The Foreign Operations District will transmit the reply or report direct to the inquiring Chief, Criminal Investigation Division, and furnish a copy to the Assistant Commissioner (CI), Attention: OP:CI:O.

(4) Documents and reports received from foreign countries, or from embassies or consulates of foreign countries, and made available to Criminal Investigation personnel will not be furnished to another government agency, except as required by regulations.

(5) When a foreign government makes direct inquiry of Criminal Investigation personnel or when it is learned that a foreign government is interested in a case, such information should immediately be referred by the Chief, Criminal Investigation Division, to the Director, Foreign Operations District, Attention: Chief, Foreign Programs Division, with a copy of such communication transmitted to the Assistant Commissioner (CI), Attention: OP:CI:O.

### **337.4** (1-18-80)

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#### **Information from Canada**

(1) National Office approval is not required where travel is to be performed in Canada by personnel of districts or regions contiguous to that country for the sole purpose of obtaining information of a routine nature in the immediate vicinity of and lying adjacent to the United States border. Such travel is limited to nearby points less than 25 miles from the United States border and travel which is not of an extended nature. Personnel in some border districts have developed a close, informal relationship with Canadian tax officials stationed on or in the immediate proximity of the border, and frequently obtain, informally through such tax officials, collateral information from individuals, financial institutions, government officials, and business establishments. It is intended that this type of informal cooperation be continued. However, such personnel are not to make direct requests of the authorities in Ottawa, or for information outside the adjacent border areas. All such requests must be made by the Chief, Criminal Investigation Division, with the concurrence of the District Director to the Director of International Operations, Attention: CP:IO:3, and copy thereof forwarded to the Director, Criminal Investigation Division, Attention: CP:CI:O. Where informal arrangements for inquiries exist in some border districts, such districts should identify in their formal requests those with whom they have been transacting official matters to avoid duplication of effort.

(2) In instances when a United States taxpayer's books and records are maintained in Canada and the taxpayer requests the special agent to inspect such books and records in that country and to be interviewed there, the special agent may be directed by the District Director to proceed to Canada in accordance with the procedure set forth in IRM 9265.4:(2). However, this exception does not apply when inquiries of third parties in Canada are necessary. Except as provided above, no direct inquiry will be made in Canada by special agents without prior approval of the Director of International Operations.

(3) Under normal circumstances in tax evasion cases, information can be obtained more readily by Canadian agents, particularly from such institutions as banks, trust companies and large corporations, than by a United States agent. Therefore, all requests for special agents to travel to Canada will be carefully screened. This does not preclude travel for meetings to exchange information at appropriate times or where the information required is so voluminous or complex that the special agent's presence is desirable. When it is necessary for a special agent to travel to Canada to obtain information from a Canadian citizen or business entity, a request will be prepared in accordance with instructions provided in IRM 9265.4 and forwarded through the Assistant Regional Commissioner to the Director, Criminal Investigation Division, Attention: CP:CI:O, for review and, if travel is believed warranted, for signature and transmittal to the Director of International Operations. It is also essential that the request:

(a) provide adequate background to support a Canadian tax interest, because Canadian tax authorities are authorized to furnish only that information which they can obtain under the revenue laws of Canada;

(b) demonstrate sufficient United States tax interest to justify the request;

(c) not be repetitious of prior request; and

(d) contain an action appropriate in the circumstances.

(4) Upon approval by the Director of International Operations, the International Operations office will obtain the necessary clearances and furnish the originating office with the procedure to be followed and, where appropriate, the name and location of the Canadian tax official who is to be contacted by the special agent. A Canadian agent will usually accompany the

special agent when third party contacts are made.

(5) Requests for information from Canada will be prepared, and routed, in the same manner prescribed in IRM 9265.1:(1). The request will contain the information specified in (3)(a) through (3)(d) above as well as the data specified in IRM 9265.3. Except under special circumstances respective procedures should be observed of limiting a request for information to a period not to exceed ten years immediately preceding the request.

(6) In some cases, where the essential information sought is complex, involved and voluminous, it may be desirable to have preliminary discussions with Canadian authorities. The request to hold preliminary discussions in such cases will be prepared and routed in the same manner prescribed in (3) above. Exchange of information resulting from the preliminary discussions will be formalized as early as possible and before any documents are exchanged.

(7) District offices should not refuse to obtain information for Canada if it is requested under the competent authority. However, in situations where it appears that the request from Canada is unreasonable, extremely extensive, or circumstances do not warrant going back beyond ten years, a memorandum reflecting the opinion of the district office will be submitted to the Director, Criminal Investigation Division, Attention: CP:I:O, through the Assistant Regional Commissioner. If the Director, Criminal Investigation Division, concludes that the circumstances justify the opinion expressed by the district office, he/she will forward the memorandum to the Director of International Operations for discussion and explanation with the appropriate Canadian official.

(8) If information received from Canada through regular channels requires further correspondence, the Chief may communicate directly with the Canadian district office which furnished the original information. However, copies of any such communication will be forwarded, one each, to the Director, Criminal Investigation Division, Attention: CP:CI:O, and to the Director of International Operations, Attention: CP:IO:3. Such direct communication applies only in instances where information has been received through regular channels and follow-up communication is necessary. The original communication and any new areas of inquiry must be routed as prescribed in (5) above. Simi-

larly, any Intelligence district office which has provided information to Canadian officials through the usual channels may subsequently communicate directly with those officials with respect to the information so provided. However, copies of any such communication will be forwarded, one each, to the Director, Criminal Investigation Division, Attention: CP:CI:O and to the Director of International Operations, Attention: CP:IO:3.

(9) In accordance with an agreement between United States and Canadian tax officials, where the tax affairs of an individual, partnership or corporation are being investigated by the United States and the same type of investigation is also being currently conducted by Canada, and one country desires to be kept informed of significant developments such as proposal to close case, etc., the authorities of that country will advise the other of this interest so that the desired information may be timely furnished.

(10) See also IRM 9265.2.

**337.5** (1-18-80) 9781  
**Summons for Records Outside the United States**

Before issuing a summons where the records are outside the United States, a copy of the proposed summons will be submitted, through

channels, to District Counsel for review. District Counsel will coordinate their review with Chief Counsel (CC:GL), who in turn will coordinate the matter with the Director, Criminal Investigation Division. The proposed summons will be accompanied by a statement describing the circumstances and efforts that have been made to secure the records and data from the taxpayer and why the taxpayer will not make the requested records available. In no event will the special agent issue the summons until advice has been received from Counsel. See also IRM 9363.4.

**337.6** (1-18-80) 9781  
**Specific Data to be Included in Request for Information from Foreign Countries See IRM 9265.3.**

**337.7** (1-18-80) 9781  
**Interpol**

(1) Interpol is the International Criminal Police Organization, better known by its radio designation—Interpol.

(2) The National Central Bureaus of member countries have machinery set up to communicate with member countries. In the United States the National Central Bureau is under the direction and control of the Departments of Justice and Treasury.

(3) The U.S. National Central Bureau can assist when there is a requirement for certain inquiries in any of the Interpol member countries.

(4) Interpol assistance includes but is not limited to the following:

- (a) Criminal History check
- (b) License plate/drivers license check
- (c) Location of suspects/fugitives/witnesses
- (d) International Wanted Circulars
- (e) Trace weapons/motor vehicles abroad

(5) Requests can be made directly to the U.S. National Central Bureau, Washington, D.C. by calling 202-633-2867 or by mail to: Interpol, Department of Justice, Washington, D.C. 20530.

### 337.8 (1-18-80)

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#### Foreign Intelligence Activities Under Executive Order 12036, Section 2

(1) Executive Order 12036, United States Foreign Intelligence Activities, was issued by the President of the United States on January 24, 1978, to provide for the organization and control of United States foreign intelligence activities.

(2) The Inspector General, Department of the Treasury, has requested that Inspection, Internal Revenue Service, distribute copies of Treasury Order No. 246 (Revision 1) and Executive Order 12036 to, among others, all Special Agents, Criminal Investigations Division.

(3) Although the Internal Revenue Service does not engage in foreign intelligence activities it is required that special agents be familiar with the provisions of these orders.

(4) Treasury Department Order No. 246, (Revision 1). (Exhibit 300-30), requires that any Internal Revenue Service employee shall report to Inspection or to the Inspector General any matters which they feel raise questions of propriety or legality under Section 2 of Executive Order 12036, Restrictions on Intelligence Activities (Exhibit 300-31).

### 337.9 (6-13-80)

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#### U.S.-Swiss Treaty on Mutual Assistance in Criminal Matters

(1) This Treaty provides a vehicle to obtain testimony and tangible evidence from Switzerland. It was designed to deal primarily with the problem of Swiss Bank Secrecy Laws but it

offers a wide range of assistance from the judicial and executive authorities of Switzerland. It designates the Attorney General as the Central Authority for the United States who must handle requests under the Treaty and whose approval is necessary for all requests. The Attorney General has delegated these duties and powers to the Assistant Attorney General of the Criminal Division.

(2) Pursuant to a request under the Treaty, Swiss Authorities may:

- (a) Execute a search warrant;
- (b) Subpoena testimony of persons in Switzerland;
- (c) Locate persons in Switzerland;
- (d) Subpoena and authenticate documents;
- (e) Supply official records;
- (f) Provide service of process;
- (g) Request persons to appear in United States;
- (h) Permit a United States official to take testimony to authenticate documents; and
- (i) Transfer prisoners needed in the United States.

(3) The Treaty applies to specified offenses which are mutually criminal, i.e., punishable under the laws of the United States and Switzerland. It generally does not apply to violations with respect to taxes. However, it does apply to offenses relating to tax laws if:

- (a) The offense is committed by a person reasonably suspected of being in the upper echelon of an organized crime group or of participating significantly in any important activity of such a group;
- (b) Available evidence is insufficient to provide a reasonable prospect of successful prosecution of this person for the illegal activities of such group;
- (c) It is reasonably concluded that requested assistance will substantially facilitate the successful prosecution of such person, and should result in his/her imprisonment for a sufficient period of time so as to have a significant adverse effect on the organized criminal group; and

(d) The securing of the information or evidence without the requested assistance is impossible or unreasonably burdensome. Another limitation especially applicable to tax cases relates to requested assistance with respect to two crimes; one to which the Treaty applies and one to which it does not. If, under Swiss Law,

the first crime merges into the second, no assistance will be provided.

(4) An "organized criminal group" is defined by the Treaty. The "elements" of such a group, without any one of which the special organized crime provisions will not apply, are:

(a) An association or group of persons combined together;

(b) Association for a substantial or indefinite period;

(c) Purpose of association;

1 monetary or commercial gains for itself or others, and

2 illegal means of obtaining these gains

(d) Carrying out purpose in a methodical and systematic manner, including:

1 acts or threats of violence or other acts which are likely to intimidate and are mutually criminal, and

2 either: striving to obtain influence in politics or commerce, especially in political organizations, public administrations, the judiciary, commercial enterprises, employers' associations, labor unions or other employees' associations, or association with a similar (organized crime) group which strives to obtain such influence.

(5) Requests for assistance must be made via memorandum by the Chief, CID, with the concurrence of the District Director, to the Director, CID, Attn: CP:CI:O. A copy of the request will be sent to the ARC (CI). The Director will coordinate requests with the Government Regulations and Labor Section of the Criminal Division of the Department of Justice. Requests should contain the following elements.

(a) An introductory paragraph naming the authority on whose behalf the request is being made, the offense being investigated, a brief statement of the need for the evidence, identification of the subject of the investigation, and a concise statement of what assistance is requested.

(b) A description of the offense in concise terms. State the code section violated. Include facts of the case, showing that the offense has taken place or your reasons for believing the offense has taken place.

(c) A statement of the need for assistance and how the evidence sought fits into the proof of the case, e.g., to prove one or more of the elements of the crime or to show a motive.

(d) A statement of the full name, place and date of birth, address, and any other informa-

tion which may aid in the identification of the persons who are at the time of the request the subject of the investigation. Also include the person's citizenship.

(e) A statement naming witnesses or other persons who may be affected by the request, e.g., joint bank account holders.

(f) The statement as to any particular procedure that is requested, e.g., the use of compulsory process for documents before notice to a witness.

(g) A statement as to whether the testimony to be taken (if any) should be done under oath or not.

(h) A description of the information, statement or testimony sought.

(i) A description of documents, records or articles of evidence to be produced or preserved, the persons on whom they are to be obtained, and the desired method of reproducing or authenticating them. This description must be as specific as possible.

(j) Information as to the allowance and expenses to which a person appearing in the United States will be entitled. The dollar amount for attendance fees and per diem can be ascertained from 28 U.S.C. 1871.

(k) Information which provides reasonable suspicion under the organized crime provisions. Reasonable suspicion is less than reasonable cause.

**338** (1-18-80) 9781

### **Business Records**

**338.1** (1-18-80) 9781

### **Banks**

**338.11** (1-18-80) 9781

### **Function and Organization**

(1) A bank is fundamentally an establishment for the custody, loan or exchange of money, and for facilitating the transmission of funds by checks, drafts, and bills of exchange and the like. Its services to customers may include administering estates; storing valuables; purchasing and selling securities; rendering advice concerning business transactions; lending money; collecting notes, drafts, bills, and coupons; furnishing business credit references; preparing tax returns; and many other services.

(2) The principles of bank accounting are basically the same in all parts of the United States. If a special agent understands these principles, he/she should be able to locate whatever available evidence there is in a bank and be able to trace transactions from one account or bank to another account or bank.

(3) The principal officers of a bank are the president, vice president, secretary, and cashier or treasurer. In many banks, vice presidents act as senior department executives or as loaning officers. The cashier ordinarily is the business manager of the bank and is the one to whom requests for information are usually made. However, there frequently is one other officer or employee of the bank who is most familiar with the accounting system, or who has been designated by the management to handle requests from the Internal Revenue Service for information. The special agent should learn the identity of that person, and should consult him/her when making official requests for information, rather than make indiscriminate inquiries of various officers and employees. The special agent should make every attempt to establish a good working relationship with such employees; however, their activities with respect to bank records or information may not be directed as a controlled informant as defined in IRM 9373.2. Chief Counsel expressed the opinion that the Right to Financial Privacy Act of 1978 did not contemplate using bank employees as controlled informants when the exemption provisions applicable to the Service were drafted. Consequently, this may be deemed a violation under the Act.

(4) The main departments of a bank are commercial, savings, trust, loan and discount, consumer credit, and special services. These are divided into subsidiary departments such as receiving, paying, trust, loan and discount, consumer credit, exchange, collection, and safe deposit, bookkeeping, clearing, transit, statistical and data processing.

(5) The receiving department makes the first entry of all items as they enter the channels of the bank. The paying department takes charge of all the cash in the bank, providing an adequate supply for its needs, paying checks, charging currency to customers, settling clearing house balances, and recording and proving the cash of the bank. The loan department is responsible for the granting and collection of loans and has custody of collateral and the credit and files of a confidential nature relating to the customers. The collection department

handles items for collection which may, or may not, go through the commercial deposit accounts. For example, an item may be collected by the bank and the funds turned over to the customer in currency, or in the form of a cashier's check, or be applied directly to the credit of the customer's account in the loan department. The safe deposit department handles all business and records in connection with the rental of, and access to, safe deposit boxes.

(6) The bookkeeping department is responsible for posting to subsidiary ledgers of the deposit liability accounts. The clearing and transit departments look after the collection of items drawn on other banks through the clearing house, by mail or messenger, or through the Federal Reserve system, and the computation of exchange charges when necessary. They route items for collection and prepare cash transit letters describing the items sent for collection. The data processing (ADP) department handles some of the above operations, which are performed by computers rather than manually.

### 338.12 (1-18-80)

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#### Bank Records

It is impossible to describe all the bank records which might contain information regarding a customer. However, the principal commercial records which are of interest to special agents are: signature cards; deposit tickets or slips; customer's ledger sheets for checking accounts; savings accounts, special accounts and loan accounts; registers or copies of cashier's checks, bank money orders, bank drafts, letters of credit, and certificates of deposit; teller's proof sheets; copies of settlements with the clearing house; copies of cash transit letters; records of the purchase and sale of securities and Government bonds; collection in and collection out records; customer's unreturned canceled checks; and safe deposit records. Storage considerations have caused many banks to destroy those records not needed for their own use and not required under law to be retained. Therefore, a special agent's success in a bank will depend somewhat on its practice of, and its policy for, retention and destruction of records.

**338.13** (1-18-80)  
**Signature Cards**

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The signature card shows the signature of the person or persons authorized to sign checks, make withdrawals, or initiate transactions through or against the account of the customer. Usually the signature is executed in the presence of an officer of the bank or of a teller or clerk, and by comparison can be used to prove authenticity of the customer's alleged signature on other papers. A bank teller who has frequently handled the customer's checks would be a competent witness to identify his signature not only on documents normally passing through his hands but also on other papers. If the account is in the name of a corporation, partnership, or association, the signature card

will be accompanied by copies of resolutions of the board of directors, or partnership and membership agreements, naming the persons who are to draw checks on the account. A signature card may also contain information concerning the name of the person who introduced the customer, prior banking connections of the customer, the names of institutions in which other accounts may be located, and other departments of the bank with which the customer has had transactions. Banks frequently keep in a central file a master signature card containing detailed information about the customer which may indicate the departments of the bank the customer does business with. Each department where the customer has an account also keeps a card bearing only the signature.

**338.14** (1-18-80)

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**Bank Deposit Tickets**

The deposit tickets or slips of a customer may be found by reference to the dates shown on the ledger sheets, since the tickets for each day are filed separately. Within this group, they are filed alphabetically or in account number order. Inspection of a slip may disclose the nature of the items deposited, classified as currency, checks and coupons. Banks prefer that checks be listed separately on the deposit slip and that they be identified by the name of A.B.A. transit number of the drawee bank. Under a system devised by the American Bankers Association, each bank in the country is identified by a number known as its A.B.A. number (Exhibit 300-2). If the deposit slip does not contain this information, it may be found by examining the proof sheets, the transit letters for foreign (out-of-town) items, and the clearing house settlement for local items. Banks that are members of the Federal Reserve system have another number known as the "routing symbol." If the A.B.A. number cannot be determined (it may be illegible) the routing symbol will indicate the general area in which the bank is located and it is possible to locate the bank by following the amount of the check on cash transit letters. These routing numbers are shown in Exhibit 300-3 and indicate the Federal Reserve District or sub-district in which the bank is located. All banks that are in the area served by a Federal Reserve Bank or Branch carry the routing symbol on their checks right underneath their A.B.A. number as

14-2—A.B.A. number  
650—Routing symbol

**338.15** (1-18-80)

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**Customer's Account Records**

## (1) Checking Accounts

(a) The fundamental difference between the bookkeeping records under a manual system and an ADP system is that under the manual system a ledger sheet is maintained for each account carried by the customer.

(b) Under an ADP system the daily information is maintained on magnetic tape, which is updated daily. A printout is made of the transactions on a cyclical basis (usually monthly). Many banks retain a copy of this printout. In some systems the statement printout may be either a

detailed ledger statement similar to that used under a manual system or a summary or "bob-tailed" statement which appears as follows:

Opening Balance	01,234.56	Number of Items—00
Deposits	3,248.12	Number of Items—7
Checks	2,222.22	Number of Items—25
Charges	21.00	Number of Items—4
Ending Balance	\$2,239.46	Number of Items—00

(c) The banks using an ADP system print-out the balances of all accounts on a daily basis. This printout, which may be referred to as a transaction journal or account balance list, will show the following information: account number, date of last activity, type of activity, previous balance, present balance, uncollected funds, and special instructions. By reference to this daily printout it is usually possible to reconstruct the account, particularly when a "bob-tailed" statement is used. Most banks using this system also microfilm all items daily so further reference can be made to the microfilm for more detailed information. Some banks again microfilm depositor's checks for the statement period before returning them to the customer.

(d) On the detailed statements under either system, all deposits, withdrawals and daily balances are shown. Symbols may appear opposite various items on the statement signifying something more than a simple deposit or withdrawal. Since banks use different symbols, a bank official or employee should be consulted regarding their meaning.

(e) If the customer deposits a check for a substantial amount drawn on a bank in a distant city, the bookkeeper, under a manual system, or the teller under an ADP system, will code the deposit so as to put a "hold" order on the account. This serves as a warning (manually) or reject (ADP) so that the deposit cannot be drawn against until the lapse of a specified period of time within which the check will be paid by the bank of origin.

## (2) Savings Accounts

(a) Ledger sheets similar to the manual type used in checking accounts are maintained for savings accounts. In an ADP system, the records will be in periodic statement form (usually quarterly). Some banks keep a copy of this statement. If this is done all that is necessary is

to obtain a copy of the statement. If statement copies are not available, then it is necessary to reconstruct the account similar to the method used for "bobtailed" statements.

(b) The deposit tickets and withdrawal slips are maintained in separate files similar to the manner described for checking accounts. These documents may show references to drafts, cashier's checks or other accounts.

(3) Loan Records

(a) Banks maintain ledger sheets for loans and separate sheets for the record of collateral used to secure loans. In those banks which use ADP systems to keep their loan records, the reconstruction problem is similar to that involved with checking accounts unless detailed annual statements are printed out and copies of them retained. The availability of the credit or loan file makes reconstruction easier.

(b) Consumer loan records are usually found in a bank department, which is separate from the commercial and mortgage loans. The credit files may be combined or separate for each department.

**338.16** (1-18-80)

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**Certified Check Register**

A certified check is a check drawn by a depositor on his account with the bank, across the face of which check a properly authorized bank officer has written the word "Certified," the date, the name of the bank, and his name. The bank has thus contracted to pay the check when presented and has charged the depositor's account. A certified check is not returned to the depositor, but after payment, is retained by the bank in its files. It is recorded in a Certified Check Register which shows at least the amount, the date certified, the depositor who issued it, and the date actually paid. Banks discourage this type of check but perform the service at the insistence of their customers.

**338.17** (1-18-80)

9781

**Bank Exchange Records**

(1) Bank exchange may be issued by preparing a single copy check, draft, or other document and then recording it in a register. However, modern practice is to prepare the check, draft, or other document in many copies prepared simultaneously by the use of carbon paper. The original is filed as the bank's copy or

register. One copy may be given the customer for his record.

(2) Bank exchange records include cashier's checks, bank drafts (one for each bank on which drawn), and letters of credit, which usually show the purchaser's name. The documents, by endorsement, will show the payees and their locations by the banks where the instruments were cashed or deposited.

**338.18** (1-18-80)

9781

**Bank Teller's Proof Sheets**

Each teller prepares daily "teller's proof sheets" on which he/she shows deposits received balanced against items received, divided into currency and coin, checks on "us," checks on clearing house banks, checks on out-of-city banks, and coupons. Unusual or large items in any category may be noted and explained on these sheets. These unusual items are reported daily to the head teller or to the officers. They are frequently retained for some time to facilitate internal audit by the bank.

**338.19** (1-18-80)

9781

**Clearing House Settlement Sheets**

Settlement sheets for clearing house items are usually maintained for only a short time. Clearing house items are usually not photographed on microfilm. However, they may be photographed by the bank on which they were drawn.

**338.1(10)** (1-18-80)

9781

**Cash Transit Letters**

Copies of cash transit letters have information of varying degrees of completeness. Some small banks record the items sent for collection on out-of-town banks on which drawn, last endorser, maker, and other information. Other banks merely list the amounts on the letter and then photograph the entire lot. When information is not available from either of the above sources, the bank or Federal Reserve Bank to which the letter was sent may have photographed the items. The date and total amount of the cash letter and the bank to which it was sent should be secured in order to trace the letter at the other end.

**338.1(11)** (1-18-80)

9781

**Securities Buy and Sell Records**

In small banks, records of purchases and sales of securities may be in correspondence files, but larger banks may have full departments with detailed records. The record of Government bonds may be in the correspondence files with the Federal Reserve Banks or may consist of copies of the manifold bond, particularly Series "E" bonds. The bank's retained copies of "E" bonds issued may be filed in various ways, such as by dates of issue or alphabetically by customers. Bonds that are cashed by banks are frequently photographed just like any other transit items. The same is true of coupons for interest that are detached from customer's bonds and deposited by them for credit to their accounts, or cashed by the bank. These coupons are usually clipped on quarterly or semiannual dates and appear in bank records at more or less regular periods of time.

**338.1(12)** (1-18-80)

9781

**Collection Records**

(1) *Collection out*—items that are not cash items are not deposited for immediate credit. They are sometimes recorded in the back of the passbook, if such is used, or they may be entered directly on a manifold form and a copy given the customer as a receipt. These are called collection out items and may include drafts with documents attached, checks with special instructions, matured bonds, acceptances, and a wide variety of commercial documents. Some banks use a collection out register, others a copy of the above described form, and a few use an individual letter, retaining a copy.

(2) *Collection in*—Collection in items are received from other banks and require payment or other action by some customer of the bank. These may likewise be recorded in a register or a manifold form may be prepared and a copy sent as a receipt to the bank from which the item came. The required action is taken and the results mailed to the bank from which the item came. These again may be large checks with special instructions; drafts with documents attached; notes for presentation, collection and payment; acceptances; savings account passbooks; or a wide variety of commercial documents.

**338.1(13)** (1-18-80)

9781

**Safe Deposit Box Records**

(1) Rental contracts for safe deposit boxes will show who has the right to enter the box, the date of the original renting, various identifying information, and the signature of the renter. Any special instructions will be with the contract, usually on a card.

(2) Access records show date and time of entry and bear the signature of the person entering the box. The frequency of entries may be

significant and may correspond in time and date to deposits or withdrawals from other accounts. If the taxpayer agrees to an inspection of the contents of the box, a written inventory showing date of entry, box number, and name of bank, shall be prepared in the presence of taxpayer and, if possible, of another agent. The taxpayer should be requested to initial all pages of the inventory and to sign the last page as acknowledgement of ownership of the contents and of the return of all items. Any currency found should be counted, and the inventory should include the quantity of bills in each denomination; any markings on the tie bands around the bundles of currency or packages of coins; and a notation regarding any bills with unusual features, such as the large size in use before 1929, gold certificates, or National Bank Notes. A record should be made of the serial numbers of large bills, and, when advisable, also of a number of the smaller bills. When a special agent finds deeds or other documents pertaining to land, he should make a record, identifying the type of document, such as "Warranty Deed," and show the names of grantor and grantee; legal description of land showing State, County, Range, Township, Section, dates, consideration, revenue stamps, and book and page number where it is recorded. Sealed matter should be opened only with the consent of the box renter. If consent is not secured, the special agent should not open the package, but should note as full a description of it as possible. The special agent should also make careful note of all comments made by the box renter to him during the inspection of the box and contents.

**338.1(14)** (1-18-80)

9781

**Checks Cashed**

(1) Banks make a distinction between checks cashed and checks paid. Cashing a check means paying out cash for a check drawn on another bank. The paying teller will mark a check of this type on its face or reverse side. If for any reason the check is returned not paid by the bank on which it was drawn, the teller must know, from the endorsement, who gave it to him in order to get the bank's money back. Paying a check is giving cash for a check on the account of a customer of the bank, or charging a check to his account.

(2) In some areas all checks on which cash is given by the teller are stamped with a code letter or number that indicates which teller and sometimes which bank or branch gave out the cash, regardless of whether the check was on his own bank or some other bank. Also, deposit tickets or withdrawal slips sometimes show denominations of cash deposited or withdrawn.



**338.1(15)** (1-18-80)

9781

**Deposits**

(1) Deposits may be classified as to their basic sources which are:

- (a) Receiving Teller
- (b) Mail or Special Messenger
- (c) Telegraphic Transfers
- (d) Other Bank Departments
- (e) Night and Lobby Depositories

(2) Deposits may also be classified according to the terms of withdrawal:

(a) *Demand deposits* which are deposits to a check account subject to withdrawal by check on demand.

(b) *Time deposits*

1 Savings account which may be subject to a 30-day notice of withdrawal.

2 Time certificates of deposit which are made by contract to be left with a bank for definite lengths of time, usually six months, and draw a higher rate of interest than the usual savings account.

3 Open account is used by corporations to put idle money to work during slack seasons where it will earn interest. Corporations cannot use savings accounts as they are prohibited from doing so by the rules of the Federal Reserve System.

(3) The Federal Reserve System forbids banks from paying time deposits before the specified date except in an emergency to prevent great hardships to the depositor. The bank is required before making such payment to obtain from the depositor an application describing fully the circumstances constituting the emergency. The application must be approved by an officer of the bank who certifies that, to the best of his knowledge and belief, the statements in the application are true. These applications are retained in the bank's files.

(4) Special agents making inquiries at Federal Reserve System member banks should be alert for Time Deposit accounts and applications relating to the emergency withdrawal of funds by this nature. These applications could be used to help establish cash on hand, lack of beginning cash and other evidence to resolve net worth claims by taxpayers.

(5) Examination of deposits and tracing of items may reveal the pattern of transactions of prior periods. That is, interviewing the makers of checks deposited may reveal the source of checks in prior periods. For example, an attempt to trace a transaction that occurred three or four years ago may be blocked because the records for the past period have been destroyed. In that event, the source of checks for prior periods might be found by tracing similar current items.

**338.1(15)**

MT 9781-27

**338.1(16)** (1-18-80)

9781

**Microfilm**

Microfilm may be used by the bank to photograph various records throughout the bank. These pictures are used to keep a permanent record of transactions in limited storage space. Microfilm has been used for a wide variety of purposes and the extent of such use varies from bank to bank. Some banks photograph everything and others photograph only transit letters. If pertinent, inquiry should be made as to when photographing began and what was photographed. The questions apply to both past and present practices.

**338.1(17)** (11-10-81)

9781

**Chase Manhattan Bank**

Every direct mail request to Chase Manhattan Bank, One Chase Manhattan Plaza, New York, New York 10081 should contain a statement that a copy of the request has been forwarded to the Chief, Criminal Investigation Division, Manhattan District, for the purpose of having a special agent from that office personally serve a summons and pick up the required data. Upon receipt of such request the bank will immediately begin to assemble the information. When making the request to Chase Manhattan Bank, a copy should be forwarded to the Chief, Criminal Investigation Division, Manhattan District, for necessary action. All other transfer agents in the Manhattan District will comply with direct mail requests for stock transfer information, providing the requests cite IRC 7602 as authority.

**338.2** (9-4-81)

9781

**Currency Transaction Reports,  
Form 4789**

**338.21** (9-4-81)

9781

**General**

(1) The Currency and Foreign Transactions Reporting Act, requires that whenever any person engages in a currency transaction involving more than \$10,000 with a financial institution, the financial institution must record the identity of the person or persons involved and file a report on Form 4789 containing certain details of the transaction. The reports are filed with the Internal Revenue Service at the Ogden Service Center. The report is made on Form 4789 and must be filed within 15 days of the transaction. (Treasury Regulation 31 CFR Part 103.22, 103.25(a) and 103.26)

(2) Form 4789 contains the following information:

(a) Name, address, identification number, and occupation of person who conducted the transaction with the financial institution.

(b) Person or organization for whom transaction was completed, account number, occupation and social security or taxpayer identification number.

(c) Detailed description of transaction including check data when applicable.

(d) Type of identification presented in the transaction including EIN and business activity.

(e) Financial institution reporting the financial transaction.

(3) All of the information from any form filed can be obtained via a TECS query at any IRS Service Center by requesting a "CTR RCN query".

(4) A copy of each report must be retained by the financial institution for a period of 5 years from the date of the report.

### 338.22 (9-4-81) 9781

#### Procedures for Obtaining Photocopies of Currency Transaction Reports (CTR's)

(1) Prior to January 1, 1980, CTR's were filed with the Philadelphia Service Center and then forwarded to the various service centers based on the address given in Part II of Form 4789, or if blank, Part I of Form 4789. After processing they became part of the information items files. These CTR's were processed and stored at the appropriate service center. CTR's received on or after January 1, 1980, are processed and filed at the Ogden Service Center. The original CTR is filed with Ogden Service Center Files Unit in the same manner as tax returns.

(2) Initially, a TECS query should be made by your service center to determine if a particular taxpayer has any CTR record. If a CTR relating to the subject has been filed the service center will be able to provide a TECS print-out containing all the information from the document (an abstract copy). If it becomes necessary to obtain a photocopy of a CTR, the following procedures should be followed:

(a) CTR's filed prior to January 1, 1980:

1 If the TECS query reveals a record of a CTR filed prior to January 1, 1980, a photocopy of the CTR may be requested from the Chief, Criminal Investigation Branch of your service center using the Report Control Number (RCN). The Criminal Investigation Branch will also be able to obtain copies of CTR's which were filed with other service centers (based on the address shown on the CTR).

(b) CTR's filed on or after January 1, 1980:

1 If the TECS query reveals a record of a CTR filed on or after January 1, 1980, a photocopy of the CTR may be requested in the same manner as a request for a tax return, using the Report Control Number (RCN).

2 In the event of an extreme emergency, you may call the Chief, Criminal Investigation Branch, Ogden Service Center, FTS 586-3182, and request assistance in obtaining a copy of a CTR. All other requests should be submitted in accordance with 1 above.

3 Since other agencies, including the Department of Treasury, are authorized access to these documents and may have an urgent and immediate need for them only photocopies should be requested for investigative purposes.

When needed for evidentiary purposes (actual court appearances) certified photocopies should be requested.

### 338.3 (1-18-80) 9781

#### Securities

### 338.31 (1-18-80) 9781

#### Stocks

### 338.311 (1-18-80) 9781

#### General

(1) When a corporation is formed, capital stock representing the ownership of the corporation is authorized in the corporate charter. There are two principal classes of stock—common and preferred. If only one class of stock is authorized, it will be common stock. The number of shares authorized can only be changed by formal approval of the stockholders.

(2) Shares issued and subsequently reacquired by the corporation through purchase or donation are referred to as treasury stock. The number of shares outstanding will always equal the number of shares issued less the number of shares of treasury stock.

(3) Each stockholder is a part owner of the corporation since each share of stock represents a fractional interest in the corporation. The stockholder is entitled to a stock certificate evidencing ownership of a specified number of shares of stock of the corporation.

(4) If a stockholder desires to buy more stock, it is not necessary to obtain the permission of the company. He/she simply acquires it by purchase in the open market or privately. Conversely, if a stockholder desires to sell shares, he/she cannot demand that the company buy the stock. A stockholder is free, instead, to seek a buyer for the stock either in the market or by private sale.

(5) After the sale terms have been agreed upon, the mechanics of transfer are simple. The seller signs his/her name on the back of the stock certificate and delivers it to the buyer or the buyer's broker. A record of all outstanding certificates is kept by the corporation or by its duly appointed transfer agent, often a bank. The transfer agent has a record of the names and addresses of the stockholders and the number of shares owned by each. After determining that the old certificate is in proper form for transfer, the transfer agent issues a new certificate to the new owner. Also, most companies have a registrar. The duty of the registrar is to double check the actions of the transfer agent to prevent improper issue of stock or fraudulent transfer.

### 338.312 (1-18-80) 9781

#### Stock Rights

A common stockholder may usually subscribe at a stated discount price to new issues of common stock in proportion to his/her hold-

ings. This privilege, known as a stock right, is usually offered to stockholders for a limited time. During this period, the stockholder may exercise the right to purchase additional shares under the terms of the offer or may choose to sell the rights. If the stockholder allows the time limit to run out without acting, the rights become worthless.

**338.313** (1-18-80) 9781  
**Stock Warrants**

A stock warrant is a certificate which gives the holder the privilege to purchase common stock at a stated price within a specified time limit or perpetually. Warrants are often issued with bonds or preferred stocks as an added inducement to investors. The stockholder may exercise the right to purchase additional shares or choose to sell the warrants.

**338.314** (1-18-80) 9781  
**Stock Splits**

When the price of the common stock of a corporation reaches a high market value, the corporation may choose to bring down the price into a more favorable trading range. To do this, the corporation splits its shares, that is, increases the number of shares outstanding without issuing additional stock. If, for example, a stockholder owned 100 shares which had a market value of \$150 per share, a 3:1 stock split would increase the stockholder's shares to 300 and decrease the market price to \$50 per share. Although the stockholder now owns a greater number of shares than before the split, the value of his/her stock and his/her proportionate interest remains unchanged. Until the new stock is sold, the split has no tax effect.

**338.315** (1-18-80) 9781  
**Dividends**

(1) A corporation may pay a dividend in cash, in stock, or in property. When cash dividends are paid, the company or its dividend disbursing agent (usually a bank) sends checks to all the stockholders whose names appear on the books of the company on the so-called record date. A dividend is a prorated distribution among stockholders and when cash dividends are paid, they are in terms of so much per share. Cash dividends are usually taxable.

(2) Some companies, in order to conserve cash, pay a dividend in their own stock. A stock dividend has an effect similar to that of a stock split in that the stockholder's proportionate share of the ownership of the company remains unchanged. A stock dividend is usually stated as a percentage of the outstanding shares (up to a maximum of 25 percent, above which it is called a stock split). A stock dividend is not taxable even though cash is paid in lieu of frac-

tional shares—although the cash itself is taxable as a dividend.

(3) When a corporation pays a property dividend, it is usually in the form of stock of another corporation which has been acquired for investment or some other purpose. Property distributions are treated as taxable dividends.

(4) It is common practice for separate financial institutions to serve as transfer agent and dividend disbursing agent. However, a single financial institution can serve both functions.

(5) Names and addresses of institutions providing these services can be found in:

(a) Securities publications such as:

(1) Financial Stock Guide Service. This is the most comprehensive service. It includes name changes, mergers, dissolutions, etc., from 1927 to present. It also includes information about Canadian corporations.

(2) Moody's

(3) Standard and Poor's

(b) Local brokerage houses

(c) Local or main offices of subject corporations.

(6) Information or documentation can be obtained by writing directly to the separate transfer agents and dividend disbursing agents.

**338.32** (1-18-80) 9781  
**Bonds**

(1) When a corporation or governmental unit wishes to borrow money for some period, usually for more than 5 years, it will sell a bond issue. Each bond, normally of \$1,000 denomination, is a certificate of debt of the issuer and serves as evidence of a loan to the corporation or governmental unit. The bondholder is a creditor of the issuer. A bond pays a stated rate of interest and matures on a stated date when a fixed sum of money must be repaid to the bondholder.

(2) Railroad, public utility, and industrial bonds are called corporate bonds. The obligations of States, counties, cities, towns, school districts, and authorities are known as municipal bonds. U.S. Treasury certificates, notes, and bonds are classified as Government securities.

(3) Bonds are issued in two principal forms coupon bonds, and registered bonds. Coupon bonds have interest coupons attached to each bond by the corporation which issues it. Because the corporation keeps no record of the owner of the bonds, they are called bearer bonds. On the due dates for the interest, the owner clips the coupons and presents them to the authorized bank for payment. Also, the principal when due, is payable to the holder or bearer of the bonds.

(4) Registered bonds have the name of the owner written on the face of the bond. The company, or its authorized agent (usually a bank), has a record of the name and address of the owner. When interest is due, it is paid to the bondholder by check.

**338.33** (1-18-80) 9781  
**Stock Exchanges**

**338.331** (1-18-80) 9781  
**General**

(1) Securities exchanges or stock exchanges neither buy nor sell securities themselves. An exchange functions as a central marketplace and provides facilities for executing orders. Member brokers representing buyers and sellers carry out these transactions. An exchange provides a continuous market for securities listed on that exchange. The exchanges are auction markets in that prices are determined by the existing supply and demand of the securities.

(2) The two major exchanges are the New York Stock Exchange (NYSE) and the American Stock Exchange (AMEX), both located in New York City. While there are approximately a dozen additional regional exchanges (such as the Midwest, Pacific Coast, and Philadelphia-Baltimore-Washington Exchanges), the NYSE and AMEX together handle more than 90 percent of the trading done through organized exchanges.

**338.332** (1-18-80) 9781  
**Listed Securities**

If a security is to be traded on an exchange, the issue must be approved for listing by that exchange. The requirements for listing on the NYSE are the most stringent. Although there are only about 1,700 issues traded on the NYSE, these issues are represented by the largest corporations in the country and have an aggregate value of nearly \$500 billion (or 95 percent of the value of all listed securities). While the AMEX listing standards are not as restrictive as the NYSE, they are nonetheless designed to insure an adequate market for the securities. Securities traded on the NYSE or AMEX may also be listed and traded on a regional exchange but no security is listed on both the NYSE and the AMEX.

**338.34** (1-18-80) 9781  
**The Over-the-Counter Market**

(1) The over-the-counter securities market handles most of the securities transactions that take place in the United States. In fact, its operations are so extensive that the easiest way to describe it is to indicate what it does not do in securities transactions. The over-the-counter market does not handle the purchase or sale of securities that actually occur on securities exchanges, but it handles everything else in the way of securities transactions. Thus, securities not "listed" on a securities exchange are "unlisted," that is, traded over-the-counter.

(2) Many different types of securities are traded over-the-counter. These include:

- (a) bank stocks
- (b) insurance company stocks

- (c) U.S. Government securities
- (d) municipal bonds
- (e) open-end investment company shares (mutual funds)

- (f) most corporate bonds
- (g) stocks of a very large number of industrial and utility corporations, including nearly all new issues

- (h) securities of many foreign corporations

(3) The over-the-counter market is not located in any one central place. Rather, it consists of thousands of securities houses located in hundreds of different cities and towns all over the United States. These securities houses are called broker/dealers and are engaged in buying and selling securities usually for their own account and risk.

(4) The over-the-counter market is a *negotiated market* rather than an auction market. Prices are arrived at by broker/dealers negotiating with other broker/dealers in order to arrive at the best price. They also buy and sell securities for the account and risk of others and may charge a commission for their services. To transact their business, they communicate their buy and sell orders back and forth through a nationwide network of telephones and teletypes.

(5) The exact size of the over-the-counter market cannot be determined since the securities transactions that take place over-the-counter occur in many different places and are not reported to one central agency. However, it is known that in dollar volume, substantially more securities are traded in the over-the-counter market than on all national securities exchanges combined.

**338.35** (1-18-80) 9781  
**Transfer Agent**

(1) The principal documents available from the transfer agent are:

- (a) stockholder ledger card
- (b) stock certificate(s)

(2) The transfer agent keeps a record of the name and address of each stockholder and the number of shares owned, and checks that certificates presented for transfer are properly cancelled and that new certificates are issued in the name of the transferee.

(3) In many small firms, the transfer agent is usually an attorney, a bank, or the corporation itself. In most large firms the transfer agent is a bank. The transfer agent can furnish the following information:

- (a) stockholder identification
- (b) stockholder position
- (c) stock certificate numbers
- (d) number of shares represented by certificates
- (e) dates certificates were issued or surrendered

- (f) evidence of returned certificates
- (g) name of transferees and transferors

**338.36** (1-18-80) 9781  
**Dividend Disbursing Agent**

(1) The principal documents available for the dividend disbursing agent are:

- (a) cancelled checks
- (b) Forms 1099

(2) The dividend disbursing agent is generally a bank and can furnish the following information:

- (a) stockholder identification
- (b) stockholder position
- (c) amount of dividends
- (d) form of dividends
- (e) dates paid
- (f) evidence of payments

**338.37** (1-18-80) 9781  
**Broker**

(1) The broker is an agent who handles the public's orders to buy and sell securities, usually for a commission. A broker may be a corporation, partnership, or individual and is often a member of a stock exchange, or a member of a stock exchange/over-the-counter securities firm.

(2) A registered representative (also known as a securities salesperson or account executive) personally places customers' orders and maintains their accounts. While commonly referred to as a broker, a registered representative is usually an employee of a brokerage firm, rather than a member.

(3) The broker can furnish virtually all source documents relating to securities account activity. The two most often used accounts are:

- (a) cash—an account that requires securities purchases to be paid in full
- (b) margin—an account that allows securities to be purchased on credit

(4) Margin is the percentage of the purchase price of a security that the customer must pay. The margin requirement is established by the Federal Reserve Board. To open a margin account, a minimum amount is usually required. Stocks purchased on margin must be registered in the street name while in the account.

(5) There are two principal ways in which securities are held—in the name of the account

holder and in street name. In the first instance, the securities owned simply reflect the name of the customer who maintains the account. When securities are held in street name, however, the securities are registered in the name of the broker. This occurs when securities have been bought on margin or when a cash customer wishes the security to be held by the broker, rather than in his/her own name.

(6) The principal documents available from a broker are:

- (a) (broker's personal) customer account cards
- (b) applications for account
- (c) signature cards and margin agreements
- (d) securities receipts
- (e) cash receipts
- (f) confirmation slips
- (g) securities delivered receipts
- (h) cancelled checks
- (i) Forms 1087
- (j) monthly account statements.

**338.4** (1-18-80) 9781  
**Commodities**

(1) Commodity exchanges are similar to stock exchanges except that they deal in futures contracts. A futures contract is a legally binding commitment to deliver or take delivery of a given quantity and quality of commodity, at a price agreed upon in the trading pit or ring of a commodity exchange at the time the contract is executed.

(2) In early futures markets the primary use of the market was that of finding a buyer or seller. Today both commercial and speculative users of the market prefer to offset, or liquidate, the obligation through opposite futures transactions rather than making or taking delivery.

(3) Futures are traded through a commission house which is a firm that transacts commodity business on behalf of commercial users of commodity futures contracts and the investment public. A number of terms are used to describe commission houses such as wire houses, brokerage houses, commodity commission merchants, etc.

(4) Commission houses become registered member firms of given commodity exchanges in order to trade or handle accounts in the markets conducted by those exchanges.

(5) The basic function of the commission house is to represent the interest of those in the market who do not hold seats on commodity exchanges such as placing orders, handling margin monies, providing basic accounting records, and counseling customers in their trading programs in return for a commission.

(6) Most customer operations are handled by a commodity representative who solicits, accepts, or services customer business in commodities traded on the Exchange. The commodity representative is involved in determining prospective customers' financial ability, opening new accounts, and the placement of individual orders.

(7) Standard documents required to open an account include such information as name, address, phone numbers, and banking references. These are usually found on customer signature or agreement forms.

(8) Accounting services usually provided by commission houses include issuance of written confirmation of all futures orders. Most firms also provide weekly purchase and sale statements that show the number of contracts purchased and sold in specific commodity markets and the current margin deposit balances. The customer normally receives a regular monthly statement that shows all trading activity, net position, and margin balance less commissions.

(9) The following is a list of commodities that are usually traded on futures markets:

- (a) Grains
- (b) Oil and Meal
- (c) Livestock
- (d) Poultry
- (e) Metals and Minerals
- (f) Forest Products
- (g) Textiles
- (h) Foodstuffs
- (i) Foreign Currencies and Financial Instruments

### **338.5** (1-18-80) 9781 **Abstract and Title Company Records**

- (1) Maps and tract books.
- (2) Escrow index of purchasers and sellers of real estate—primary source of information.
- (3) Escrow files—number obtained from index.
- (4) Escrow file containing escrow instructions, agreements, and settlements.
- (5) Abstracts and title policies.
- (6) Special purpose newspapers published for use by attorneys, real estate brokers, insurance companies and financial institutions. These newspapers contain complete reports on transfers of properties, locations of properties transferred, amounts of mortgages, and releases of mortgages.

### **338.6** (1-18-80) 9781 **Agriculture Records**

- (1) County veterinarians.
- (2) Commission merchants.
- (3) Insurance companies (insure shipments).
- (4) Transportation companies.
- (5) Storage companies.
- (6) Count and state fair bonds.
- (7) Country farm agents.
- (8) State cattle control boards (some states maintain records of all cattle brought in and taken out of state).

### **338.7** (1-18-80) 9781 **Automobile Manufacturer and Agency Records**

- (1) Franchise agreements.
- (2) Financial statements of dealers.
- (3) New car sales and deliveries—used car purchases, trade-ins, and sales.
- (4) Service department—mileage, order and delivery signature to indicate presence in area.

### **338.8** (1-18-80) 9781 **Bonding Company Records**

- (1) Investigative and other records on persons and firms bonded.
- (2) Collateral file.
- (3) Financial statements and data.
- (4) Address of person on bond.

### **338.9** (5-9-80) 9781 **Credit Agency Records**

(1) The Fair Credit Reporting Act, an amendment to the Consumer Credit Protection Act, went into effect on April 24, 1971. Certain provisions of this amendment have a restrictive impact on the availability of information involving individuals from consumer reporting agencies to IRS and other Governmental agencies. Consumer reports may be furnished by consumer reporting agencies only in the following situations.

- (a) In response to an order of a court having jurisdiction to issue such an order.
- (b) Upon written request of the consumer.
- (c) To a person who has a legitimate business need for the information in regard to a business transaction involving the consumer.

(2) There is no specific exception provided in the law which will allow Federal law enforcement agencies to obtain credit reports for investigative purposes. As a result, consumer reporting agencies may not furnish credit reports to IRS for use in tax investigations. Further, the Act provides criminal penalties for obtaining information under false pretenses and for unauthorized disclosures by officers or employees of consumer reporting agencies.

(3) The Act provides that consumer reporting agencies may furnish only identifying infor-

mation to a Governmental agency. This identifying information is limited to a consumer's name, address, former addresses, places of employment and former places of employment.

(4) The Fair Credit Reporting Act is directed at consumer credit reporting activities involving individuals and not at commercial credit reporting activities involving business entities.

(5) The provisions of the Fair Credit Reporting Act do not cover commercial credit reports on corporations and similar business entities.

(6) With regard to partnerships, if the report is on the individuals comprising the partnership, the provisions of the Act might apply. Cases of this type should be referred to the District Counsel for advice.

(7) With regard to fiduciaries, the question of whether the provisions of the Act would restrict the furnishing of a report would depend upon the nature of the trust. If it is a business trust, that is, a corporation or similar business entity, the Act does not apply. If the fiduciary is representing an individual, the provisions of the Act might apply. Cases of this type should also be referred to the District Counsel for advice.

(8) When a consumer report is part of the records of an entity which is not a consumer reporting agency, the provisions of the Act do not apply. However, many entities not normally considered to be consumer reporting agencies may be considered such depending on how they receive and share information from other creditors. Therefore, before accepting any consumer report contained in the records of a third party, District Counsel should be consulted.

**338.(10)** (1-18-80) 9781  
**Department Store Records**

- (1) Charge accounts.
- (2) Credit files.

**338.(11)** (1-18-80) 9781  
**Detective Agency Records**

- (1) Investigative files.
  - (a) Civil.
  - (b) Criminal.
  - (c) Commercial.
  - (d) Industrial.
- (2) Character check.
- (3) Fraud investigations.
- (4) Blackmail investigations.
- (5) Divorce evidence.
- (6) Missing persons search.
- (7) Security patrols.
- (8) Guards.
- (9) Undercover agents.
- (10) Surveillance work.
- (11) Lie detector tests.
- (12) Employee checking.
- (13) Personnel screening.
- (14) Fingerprinting.
- (15) Service checking.
  - (a) Restaurants.

- (b) Public transportation.
- (c) Stores.

**338.(12)** (1-18-80) 9781  
**Distributors Records**

- (1) Gambling equipment.
- (2) Wire service.
- (3) Factory, farm, home office equipment, etc.

(4) Wholesale toiletry—Cash rebates are paid by some toiletry manufacturers. Details of available contracts which pay rebates to wholesale toiletry distributors are contained in publications issued by the Toiletry Merchandisers Association Inc., 230 Park Avenue, New York, New York 10017, and the Druggist Service Council Inc., 1290 Avenue of the Americas, New York, New York 10019.

**338.(13)** (1-18-80) 9781  
**Drug Store Records**

Prescription records.

**338.(14)** (1-18-80) 9781  
**Fraternal, Veterans, Labor, Social, Political Organization Records**

- (1) Membership and attendance records.
- (2) Dues, contributions, payments.
- (3) Location and history of members.

**338.(15)** (1-18-80) 9781  
**Hospital Records**

- (1) Entry and release dates.
- (2) Payments made.

**338.(16)** (1-18-80) 9781  
**Hotel Records**

- (1) Identity of guests.
- (2) Telephone calls made to and from room.
- (3) Credit record.
- (4) Forwarding address.
- (5) Reservations for travel—transportation companies and other hotels.
- (6) Payments made by guest.
- (7) Freight shipments and luggage—in and out.

**338.(17)** (1-18-80) 9781  
**Laundry and Dry Cleaning Record**

- (1) Marks and tags.
  - (a) New York State Police, White Plains, New York.
  - (b) Other local or State police departments
  - (c) National Institute of Dry Cleaning, Inc., Washington, D.C.

**338.(18)** (11-10-81) 9781  
**Insurance Company Records**

**338.(18)1** (11-10-81)

9781

**General**

(1) Life, accident, fire, burglary, automobile and annuity policies—net worth data.

(2) Applications—background and financial information as well as insurance carried with other companies.

(3) Fur and jewelry floaters—appraised value and description.

(4) Customer's ledger cards.

(5) Policy and mortgage loan accounts.

(6) Dividend payment record.

(7) Payment records on termination (life), losses (casualty), or refunds on cancellations.

(8) Correspondence files.

(9) Payments to doctors, lawyers, appraisers and photographers hired directly by the insurance company to act for the company or as an independent expert.

**338.(18)2** (11-10-81)

9781

**The Equitable Life Assurance Society of the United States**

The Equitable Life Assurance Society of the United States has advised that all inquiries concerning policies issued or its policyholders be made in person or by mail at its home office, 1285 Avenue of the Americas, New York, New York 10019. This company has indicated they would prefer requests be made by mail rather than in person.

**338.(18)3** (11-10-81)

9781

**Prudential Life Insurance Company**

Inquiries to Prudential Life Insurance Company are not to be made by mail addressed to its home office, which is in Newark, New Jersey. Special agents with posts of duty outside the Newark District should make inquiry by collateral request together with a summons to the Chief, Criminal Investigation Division, Newark District. For insurance information the collateral request must include the individual's birth date, or the serial number of one of the policies issued to him by the company, or both. A request for mortgage information should include the name of the taxpayer's spouse, the exact location of the property in question, and if possible, other identifying details such as the Prudential mortgage number appearing on the document, or the date of the transaction.

**338.(18)4** (11-10-81)

9781

**Travelers Insurance Company**

Whenever information is needed from Travelers Insurance Company, Hartford, Connecticut, special agents outside the Hartford District should prepare a collateral request together with a summons for any information or data desired from the company for transmittal to the Chief, Criminal Investigation Division, Hartford District.

**338.(18)5** (11-10-81)

9781

**Union Central Life Insurance Company**

Whenever information is needed from Union Central Life Insurance Company, Cincinnati, Ohio, special agents outside the Cincinnati District should prepare a collateral request together with a summons for any information or data desired from the company for transmittal to the Chief, Criminal Investigation Division, Cincinnati District.

**338.(18)6** (11-10-81)

9781

**Metropolitan Life Insurance Company**

Inquiries to the Metropolitan Life Insurance Company may be made in person or by mail. Inquiries should be made at its home office, 1 Madison Avenue, New York, New York 10038, Attn: Policy Services Division, to determine the location of the desired records. For individuals residing in California, Idaho, Montana, Oregon, Utah and Washington, requests should be made to the Pacific Coast Head Office, 600 Stockton Street, San Francisco, California 94120. For individuals residing in Florida, Georgia, North Carolina, Tennessee, Virginia, Kentucky, the District of Columbia and parts of Alabama and South Carolina, inquiries may be made in person or by mail to 4100 Boy Scout Boulevard, Tampa, Florida 33607. Other Records may be available in regional offices in Tulsa, Oklahoma, or Providence, Rhode Island.

**338.(18)7** (11-10-81)

9781

**Pan American Life Insurance Company**

Inquiries to the Pan American Life Insurance Company may be made in person or by mail at its home office, 2400 Canal Street, New Orleans, Louisiana. Although personal service of a summons is not required, all mail requests for information should be accompanied by a summons, and addressed to the attention of the Legal Department.

**338.(18)8** (11-10-81)

9781

**CNA Insurance Companies**

(1) Inquiries to CNA Insurance Companies are to be made at their headquarters in Chicago, Illinois. Special agents with posts of duty outside the Chicago District should make inquiry by collateral request to the Chief, Criminal Investigation Division, Chicago District.

(a) CNA Insurance Companies are as follows:

- 1 American Casualty Company of Reading, Pennsylvania
- 2 CNA Casualty of California
- 3 CNA Casualty of Puerto Rico
- 4 Columbia Casualty Company

- 5 Continental Casualty Company
- 6 Continental Assurance Company
- 7 Mid-States Insurance Company
- 8 National Fire Insurance Company of Hartford
- 9 Transcontinental Insurance Company
- 10 Transportation Insurance Company
- 11 Valley Forge Insurance Company
- 12 Valley Forge Life Insurance Company

(b) Requests for insurance information on policy holders should include the policy number(s). If the policy number is not available or known, other identifying data should be included, such as Social Security number, Employer Identification Number, etc.

(c) Requests for information concerning employees or agents should be so identified.

(d) Inquiries or summonses for CNA Insurance Companies should be directed to and personally served to:

- 1 Director, Corporate Security  
Controllers Department  
CNA Insurance  
CNA Plaza—34th Floor  
Chicago, IL 60685

2 The exact officer's name will be filled in upon service of the summons.

(e) A special agent from the Chicago District will be assigned to serve summonses and make necessary inquiries for information requested from CNA.

**338.(18)9** (11-10-81) 9781  
**Aetna Life and Casualty**

(1) Special Agents outside the Hartford District seeking information from Aetna Life and Casualty should request the information through collateral requests to the Chief, Criminal Investigation Division, Hartford District. The summons should be addressed to:

- Aetna Life and Casualty  
151 Farmington Avenue  
Hartford, CT 06156.

(a) The following information should also be supplied with the summons:

- 1 First, middle and last name, including aliases, or company name in the case of a business.
- 2 Date and place of birth.
- 3 Social Security or Employer Identification Number.
- 4 Address during years under examination.

(b) The following information should also be furnished when possible:

- 1 Names of spouse, dependents and other persons associated with the taxpayer under investigation.
- 2 The type of data desired, such as:
  - a Medical or dental payments to physicians or dentists.

b Insurance policies purchased and premiums paid. Include pertinent dates and policy numbers and specify type of coverage such as Life, Health and Accident, Auto, etc.

c Policy loans and loan repayments. Policy holder's dividends. Include dates and policy numbers.

(c) The following are some of the principal subsidiaries that are commonly involved in requests for information. Summonses involving these companies should be addressed to Aetna Life and Casualty as noted above. Where possible, Criminal Investigation Division personnel should indicate the company involved:

- 1 Aetna Life Insurance Company
- 2 The Aetna Casualty and Surety Company
- 3 The Standard Fire Insurance Company
- 4 The Automobile Insurance Company of Hartford, Connecticut
- 5 Aetna Casualty and Surety Company of America
- 6 Aetna Casualty and Surety Company of Illinois
- 7 Aetna Life Insurance Company of Illinois
- 8 Aetna Health Management, Inc.
- 9 Aetna Premium Plan, Inc.
- 10 Aetna Variable Annuity Life Insurance Company
- 11 Aetna Business Credit, Inc.
- 12 Aetna Income Shares, Inc.

**338.(19)** (1-18-80) 9781  
**Newspaper Records**

Clippings on a given person assembled in one file with photographs, notes, unpublished, data, etc.

**338.(20)** (1-18-80) 9781  
**Oil Company Records**

Various oil companies publish directories of truck stops which may be useful in diesel fuel excise tax cases in providing leads to retail dealers throughout the country.

**338.(21)** (1-18-80) 9781  
**Photograph Records**

- (1) Relatives, associates, and friends.
- (2) Previous places of employment—employee or company publications.
- (3) Police and FBI files.
- (4) Schools—yearbooks, school papers, etc.
- (5) Nightclub or sidewalk photographers and photography studios.
- (6) License bureaus—drivers, chauffeurs, taxis, etc.
- (7) Newspaper morgues.
- (8) Military departments.
- (9) Fraternal organizations.
- (10) Church groups.
- (11) Race tracks.

(12) Photographs made of checks and persons presenting checks for cashing.

**338.(22)** (1-18-80) 9781

**Private Business Records**

(1) Examination of records for transactions with taxpayer.

(2) Canceled checks and taxpayer's endorsement and disposition.

(3) Discovery of other companies with whom taxpayer transacted business.

**338.(23)** (11-10-81) 9781

**Publication Records**

(1) Professional, trade, and agriculture directories and magazines.

(2) Who's Who of America and various states.

(3) Tax services.

(4) City directories.

(5) Moody's, Standard and Poor's Corporation Record, Financial Stock Guide Service.

(6) Telephone directories.

(7) Billboard Magazine (weekly)—amusement coin-machine, burlesque, drive-ins, fairs, stage, radio, T.V., magic, music machines, circuses, rinks, vending machines, movies, letter list, obituaries.

(8) Variety (weekly)—literature, radio, T.V., music, stage, movies, obituaries, and the like.

(9) Expenses in Retail Business' shows percentage of profits, costs and expenses for various retail businesses. May be obtained, free of charge, from National Cash Register Company offices.

(10) American Racing Manual—Published by Triangle Publications, Inc., 10 Lake Drive, P.O. Box 1015, Highstown, New Jersey 08520; record showing amounts paid to owners of winning horses by each race track in the United States, Canada, and Mexico. Publishers request that information be obtained in person by a special agent.

**338.(24)** (1-18-80) 9781

**Public Utility Company Records**

(1) Present and previous address of subscriber.

(2) Payments made for service.

(3) Payments made for "major" purchases.

**338.(25)** (1-18-80) 9781

**Real Estate Agency or Savings and Loan Association Records**

(1) Property transactions.

(2) Financial statements.

(3) Loan applications.

(4) Payments made and received (settlement sheets).

(5) Credit files.

**338.(26)** (1-18-80) 9781

**Telephone Company Records**

(1) Local directories—alphabetical and reverse.

(2) Library of "out of city" directories.

(3) Records of toll calls.

(4) Records of payments for service.

(5) Investigative reports on phones used for illegal purposes.

**338.(27)** (1-18-80) 9781

**Transportation Company Records**

(1) Passenger list.

(2) Reservations.

(3) Destinations.

(4) Fares paid.

(5) Freight carrier—shipper, destination, storage points.

(6) Departure and arrival times.

**338.(28)** (1-18-80) 9781

**Consumer Loan Exchange or Lenders Exchange**

An organization known as the Consumer Loan Exchange or Lenders Exchange exists in all of the large cities in the United States, as well as in some of the smaller cities. It is a non-profit organization, supported by and for its members. Most of the lending institutions are members of the Exchange. It can supply information concerning open and closed loan accounts with member companies, and other information. These organizations are not listed in directories or telephone books. Their location in a city may be obtained through local ending agencies. Consumer Reports may be obtained from these organizations only by court order or in accordance with written instructions of the consumer to whom the information relates.

**338.(29)** (11-10-81) 9781

**Marshall Field and Company**

Inquiries shall not be made by mail addressed direct to Marshall Field and Company, Chicago, Illinois. Special agents with posts of duty outside Chicago requiring information from that company shall make inquiry by collateral request together with a summons to the Chief, Criminal Investigation Division, Chicago, for such information. The exact officer to be served should be left blank when forwarding the summons with the collateral request. If a special agent is conducting inquiries in Chicago and it is necessary to obtain information from Marshall Field and Company, he/she shall consult the Chief, Criminal Investigation Division, Chicago, who will make any necessary arrangements with the company so that the agent may obtain the desired information.

**338.(30)** (11-10-81) 9781  
**Western Union Telegraph Company**

Requests for information from Western Union Telegraph Company by special agents with posts of duty outside of St. Louis, Missouri, shall be transmitted via collateral request together with a summons to the Chief, Criminal Investigation Division, St. Louis District. The exact officer to be served should be left blank when forwarding the summons with the collateral request.

**338.(31)** (11-10-81) 9781  
**Investors Diversified Services, Inc.**

Investors Diversified Services, Inc., an investment company, consists of the following subsidiaries and affiliates: Investors Syndicate Life Insurance and Annuity Company, Investors Syndicate of America, Inc., Investors Stock Fund, Inc., Investors Mutual, Inc., Investors Selective Fund, Inc., Investors Group Canadian Fund Ltd. (name changed to Investors Inter-Continental Fund, Ltd. on August 17, 1962), and Investors Variable Payment Fund, Inc. The principal place of business of Investors Diversified Services, Inc. and its various affiliates is located in Minneapolis, Minnesota. All inquiries should be made by collateral request together with a summons to the Chief, Criminal Investigation Division, St. Paul, Minnesota. The exact officer to be served should be left blank when forwarding the summons. All investors are notified by the company that information about their account has been disclosed to a representative of the Internal Revenue Service pursuant to a summons.

**338.(32)** (11-10-81) 9781  
**National Credit Card Agencies**

**338.(32)1** (11-10-81) 9781  
**General**

National agencies, such as American Express, Diners Club and Carte Blanche, which provide credit cards for use in charging travel, entertainment, goods and services, can determine whether an individual or business concern has an account from their central index files. If details of the account are needed, information requests should indicate whether only copies of the monthly statements or copies of both the

statements and charge slips are desired, the time period to be covered, the taxpayer's home address, and the name and address of his/her employer or business.

**338.(32)2** (11-10-81) 9781  
**American Express**

In order to obtain information from American Express, special agents with posts of duty outside the Manhattan District should make inquiry by collateral request together with a prepared summons to the Chief, Criminal Investigation Division, Manhattan District. American Express will not accept service by mail. The summons should be served in person at 770 Broadway, New York, New York 10003. The Custodian of Records for American Express is Ted Groder. In addition to the taxpayer's name and address, a social security number for the taxpayer should be furnished.

**338.(32)3** (11-10-81) 9781  
**Diners Club**

In order to obtain information from Diners Club, a summons should be served via mail to 10 Columbus Circle, New York, New York 10019, marked for the attention of the Corporate Legal Department. In addition to the monthly statements and charge slips, copies of the original application and payment check can be made available upon official request. These records are usually maintained by Diners Club for seven years.

**338.(32)4** (11-10-81) 9781  
**Carte Blanche**

In order to obtain information from Carte Blanche, special agents with posts of duty outside the Los Angeles District should make inquiry by collateral request to the Chief, Criminal Investigation Division, Los Angeles District.

**338.(33)** (11-10-81) 9781  
**Other Business Records**

See 700:(2) through (5) of Law Enforcement Manual IX for additional information concerning business records.

**339** (1-18-80) 9781  
**Reporting Threats Against the President and Possible Violations of Other Laws**

**339.1** (1-18-80) 9781  
**Notification to U.S. Secret Service  
 (IRM 9378)**

**339.11** (1-18-80) 9781  
**Information Pertaining to Threats  
 Against the President**

(1) The U.S. Secret Service is charged with the responsibility of protecting the President and certain other Government officials and public figures, including: members of the President's immediate family; the President-elect; the Vice President or other officer next in the order of succession to the Office of President; former Presidents; the wife, widow, and minor children of former Presidents; Presidential and Vice Presidential candidates; and visiting heads of foreign states or foreign governments. The Executive Protection Service, under the direction of the Secret Service, is responsible for the protection or the Executive Mansion and foreign diplomatic missions in the District of Columbia metropolitan area.

(2) Any Service employee who receives information either orally or in writing which indicates a potential threat to the health or safety of one of the individuals in (1) above should report the information immediately by telephone to the nearest U.S. Secret Service Office or to the U.S. Secret Service Intelligence Division, Washington, D.C. (Area Code 202-634-5838). If the Secret Service should request information to aid in the prevention of crimes involving a threat to the life of a individual described in (1) above, the employee may, without seeking prior supervisory approval, immediately provide information relevant to the threat. However, if the employee is concerned that the disclosure may involve a protected return, return information or taxpayer return information, see (35)30 of the "new" IRM 1272, Disclosure of Official Information Handbook.

(3) If an employee discloses information as described in (2) above, he/she shall prepare a

memorandum setting forth all the facts disclosed, together with any other facts bearing on the matter and full details as to the circumstances under which such information was acquired. The memorandum should be transmitted immediately to the head of the office and a copy should be forwarded to the Director, Disclosure Operations Division, National Office.

(4) When there are Presidential and Vice-Presidential candidates who are not receiving Secret Service protection, any Service employee obtaining information concerning threats against them or other persons in close proximity to them is authorized to disclose this information to the nearest FBI office to the same extent and in accordance with the procedures described in (2) and (3) above.

**339.12** (1-18-80) 9781  
**Cases Involving Possible Forgery  
 of U.S. Check**

(1) Whenever information is received indicating that forgery concerning a United States Government check is involved in a case within the investigative jurisdiction of Criminal Investigation (including any case involving checks issued to fictitious payees), the nearest office of the U.S. Secret Service shall be notified thereof in writing by the Chief, Criminal Investigation Division. The Secret Service, in turn, will notify the Treasurer of the United States. Cooperation shall be given the Secret Service agents to the extent permissible, within the limitations of IRC 6103 and 7213, in developing the forgery aspect of the case. (See Policy Statement P-9-33.) In order to protect the development by Criminal Investigation of a possible criminal tax case, the Secret Service has informed us that they will make no investigation in the case until such action has been coordinated with Criminal Investigation. The Secret Service officials have stated that they will not consult with the United

States Attorney about the forgery violation until such consultation can be done jointly with representatives of Criminal Investigation, or until such consultation has been coordinated with the Chief, Criminal Investigation Division. Secret Service instructions provide that no action will be taken by the Secret Service on any question of settlement of the forgery case until such action is agreeable with Criminal Investigation. Copies of pertinent affidavits, handwriting exemplars, personal and criminal history, and other items of interest will be made immediately available by each Service to the other investigating agency, and each Service will keep the other informed of the progress of the investigation being made, to avoid unnecessary duplication of effort.

(2) Investigations of this type require the closest coordination between Criminal Investigation and the Secret Service. For this reason the Chief, Criminal Investigation Division, and, where appropriate, the ARC (Criminal Investigation) shall confer with the Secret Service Special Agents in Charge in his/her district or region to work out office procedures for joint handling of these cases which will ensure that the responsibilities of each Service are properly discharged and that all the interests of the Government in these cases are fully safeguarded. They shall keep themselves informed of the development of such cases.

(3) Due to the importance of news coverage in such cases, especially those involving "tax experts" and multiple false returns, the District Director will initiate and control any press releases issued in accordance with IRM 9448.

(4) At the time the Secret Service is notified of possible forgery in a Criminal Investigation case, identification of the check or checks involved, to the extent possible, shall be set out in the notification. The Secret Service office will obtain photostat copies of each such check as requested by Criminal Investigation. Ordinarily, one copy of such check will be sufficient for the Criminal Investigation.

### 339.13 (1-18-80)

9781

#### Other Information of Interest to the Secret Service

(1) The following are other areas of responsibility of the Secret Service. Procedures in IRM 9378.2 should be followed in reporting information received relating to these activities to the Secret Service:

(a) the use of bodily harm, assassination, or kidnapping as a political weapon. This should include training and techniques used to carry out the act.

(b) persons who insist upon personally contacting high government officials for redress of imaginary grievances, etc.

(c) any person who makes oral or written statements about high government officials in the following categories:

- 1 threatening statements
- 2 irrational statements
- 3 abusive statements

(d) professional gate crashers.

(e) terrorists (individuals, groups) and their activities (bombing, etc.).

(f) the ownership or concealment by individuals of groups of caches of firearms, explosives, or other implements of war, when it is believed that their intended use is for other than legal purposes.

(g) anti-American or anti-U.S. Government demonstrations in the United States or overseas.

(h) information regarding civil disturbances.

(i) counterfeiting of U.S. or foreign obligations, i.e., currency, coins, stamps, bonds, U.S. Treasurer's checks, Treasury securities, Department of Agriculture Food Stamp coupons, etc.

(j) the forgery, alteration, and fraudulent negotiation of U.S. Treasurer's checks, U.S. Government bonds and Government Travel Requests (GTR's).

(2) In all cases, the person making the referral will prepare and submit a memorandum as provided in IRM 9378.2:(3).

### 339.2 (1-18-80)

9781

#### Information Concerning Possible Violations of Federal, State and Local Criminal Laws

(1) In the performance of their official duties, special agents should be particularly alert for indications of possible violations of the Internal Revenue Code, as well as violations of other Federal, State, or local criminal laws. Information concerning alleged violations of laws administered by IRS will be reported through

channels in accordance with existing procedures.

(2) Return information (other than taxpayer return information) indicating a possible violation of a Federal criminal law not administered by the Service which is obtained by a special agent during the course of an official investigation, will be reported by memorandum to the Chief, Criminal Investigation Division. Return information (other than taxpayer return information) is information in the possession of the IRS which was not received from the taxpayer, the taxpayer's representative, or the taxpayer's return and supporting schedules. Such information includes the taxpayer's identity, the nature, source or amount of his/her income, payments, receipts, deductions, exemptions, credits, assets, liabilities, net worth, tax liability, tax withheld, deficiencies, overassessments, or tax payments, whether the taxpayer's return was, is being, or will be examined or subject to other investigation or processing, or any other data, received by, recorded by, furnished to, or collected by the Secretary with respect to a return or with respect to the determination of the existence, or possible existence, or liability (or the amount thereof) of any person under the Internal Revenue Code for any tax, penalty, interest, fine, forfeiture, or other imposition, or offense. The memorandum should contain the following information relating to the violation.

(a) Name, social security number, address, and aliases of subject (if known).

(b) Business or occupation of subject (if known).

(c) Facts and circumstances surrounding the nontax violation.

(d) U.S. Code sections believed violated.

(e) Specific source of information, i.e., 3rd party, taxpayer, taxpayer's representative, taxpayer's return and the circumstances under which the information was obtained.

(f) Agency to whom this violation would be of interest, i.e., U.S. Attorney (Judicial District), Strike Force Attorney (location), other agency (specify).

(g) System of Records from which information was obtained.

(3) The Chief, Criminal Investigation Division will furnish such information to the disclosure officer for forwarding to the National Office, Disclosure Operations Division. In cases where the information was obtained during the course of a wagering (IRC Chapter 35) investigation,

see IRM 9420 for disclosure procedures as some information may not be disclosed in accordance with IRC 4424. If in doubt as to whether the information may be disclosed, contact your disclosure officer. See IRM 9411.3 for disclosure procedures in Special Enforcement Program (SEP) cases; if the information concerns alleged impersonations of a Federal Officer, see IRM 9123: (4); and, if it indicates that forgery of a United States Government check is involved in a case within the jurisdiction of Criminal Investigation, see IRM 9378.1.

(4) When a special agent either witnesses the commission of any nontax criminal act, or receives information orally or in writing from any source indicating facts that relate to a nontax violation of Federal, State or local criminal laws and such facts are determined to be information not protected from disclosure by IRC 6103, such information may be disclosed to appropriate Federal, State or local law enforcement officials in accordance with procedures in Chapter 100 of "new" IRM 1272, Disclosure of Official Information Handbook.

(5) Information relating to any Federal violation not within the jurisdiction of the Service which the Chief, Criminal Investigation Division believes to be derived from "Taxpayer Return Information" as defined in IRC 6103(b)(3) should be forwarded in the same manner as return information outlined in IRM 9382.4: (3) above. The Service may not voluntarily disclose taxpayer return information but will maintain files in the Disclosure Operations Division, National Office, to assess the impact of the Tax Reform Act of 1976.

(6) In the event that any disclosure described above would impair a criminal tax investigation or any tax administration matter, the Chief, Criminal Investigation Division should weigh the relative significance of this potential impact and the seriousness and significance of the nontax violation in determining whether or not to forward the information. If a determination not to forward the information is made, the Chief, Criminal Investigation Division should immediately advise the District Director of the reasons for that determination. The Chief, Criminal Investigation Division should periodically reevaluate the seriousness and significance of the nontax violation and the impact of disclosure on the criminal tax investigation or tax administration matter to determine if the circumstances causing the decision not to disclose are still valid.

(7) Where an informant's letter contains an allegation of a tax violation and an allegation of some other Federal law violation not within the investigative jurisdiction of the Service, Criminal Investigation may furnish the latter information, in writing, directly to the appropriate agency. However, the informant's letter, or copy thereof, may not be furnished as that would constitute an unauthorized disclosure both of the tax information and of the identity of an informant who furnished information of a tax violation. In such instances, the name of the informant should not be disclosed except when the other agency requests that the source of the information be identified and then only with the permission of the informant after it has been explained to him/her that one or more allegations made by him/her fall within the investigative jurisdiction of another agency.

(8) Information concerning potential diversion of nuclear material should be immediately reported by the special agent to his/her group manager who will transmit the information at once to the nearest FBI field office and, as soon as practicable, to the Assistant Commissioner (Compliance). In all cases, the group manager making the referral will prepare a written report containing all the information furnished to the FBI, the name and title of the person to whom the information was given, and the time and date of the referral. This report should be forwarded through the District Director to the Assistant Commissioner (Compliance), National Office, as confirmation of the telephone referral. If this information is either return information or taxpayer return information, the procedures in IRM 9382.4:(3) and IRM 9382.4:(5) respectively, should be followed. In emergency situations, the Disclosure Officer should be contacted immediately so that he/she may contact the Disclosure Operations Division, National Office for consultation, if necessary.

(9) See also IRM 9382.4

**340** (1-18-80) 9781  
**Witnesses and Prospective Defendants**

**341** (1-18-80) 9781  
**Rights and Obligations of Witnesses and Prospective Defendants**

**341.1** (1-18-80) 9781  
**General**

All persons called as witnesses, whether prospective defendants or otherwise, whether natural persons or corporate entities, and whether they appear as witnesses in response to court or grand jury subpoena, Commissioner's summonses, or simple requests to appear for interview, have rights and obligations defined by the United States Constitution, statutes, and court decisions.

**341.2** (1-18-80) 9781  
**Constitutional Law**

(1) *Constitutional protections* are provided in the Fourth, Fifth and Sixth Amendments, which read as follows:

(a) Fourth Amendment—

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

(b) Fifth Amendment—

"No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty or property, without due process of law; nor shall private property be taken for public use, without just compensation."

(c) Sixth Amendment—

"In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining Witnesses in his favor, and to have the Assistance of Counsel for his defense."

**341.3** (1-18-80) 9781  
**Legality and Use of Certain Evidence and Equipment**

**341.31** (1-18-80) 9781  
**Admissibility of Evidence**

(1) Evidence obtained by Federal officers in violation of constitutional provisions, at any stage of an investigation or proceeding, will be excluded at the instance of the defendant in the trial of a criminal case. [*Boyd v. U.S.*; *Weeks v. U.S.*; *Gouled v. U.S.*; *U.S. v. Guerrina*] Federal Courts have also excluded such evidence in civil cases, [*Fraternal Order of Eagles v. U.S.*] including those involving collection of wagering taxes, [*Lassoff v. Gray*; *U.S. v. Four Thousand One Hundred Seventy One Dollars in U.S. Currency*] although it is admissible in a civil wagering case to impeach a person's testimony that he/she has not engaged in the wagering business. [*Walder v. U.S.*; *Lassoff v. Gray*]

(2) Evidence obtained by state officers under circumstances which would constitute unreasonable search and seizure under the Fourth Amendment if obtained by Federal officers is equally inadmissible in a Federal criminal trial. [*Elkins v. U.S.*] This repudiates the former so-called "silver platter" doctrine which had allowed Federal courts to admit evidence illegally obtained by state officers if there had been no collusion by Federal officials. The Federal court must decide for itself if there has been an unreasonable search and seizure by state officers, even though the state court has already considered the question and irrespective of the state court's findings. [*Elkins v. U.S.*; *Boyle v. U.S.*; *U.S. v. Scolnick*]

(3) A person who has thrown records into a trash can, especially if he/she shares it with other building tenants, is considered to have abandoned the records, and cannot claim that agents who later take them from the trash can have violated his/her rights under the Fourth Amendment. [*U.S. v. Minker*]

(4) The rule excluding evidence unlawfully taken does not apply where the unlawful taking was by private persons without participation or collusion of law enforcement officers. [*Burdeau v. McDowell*; *U.S. v. Morris C. Goldberg*]

(5) The Supreme Court has upheld the use of an informant. [*Hoffa v. U.S.*] or an undercover

agent [*Lewis v. U.S.*] to obtain incriminating evidence against a defendant. The Constitution does not protect a wrongdoer's misplaced belief that a person to whom he/she voluntarily confides his/her wrongdoing will not reveal it.

**341.32** (1-18-80) 9781  
**Use of Investigative Equipment**

Special Agents will at all times conform to the Department of Justice guidelines on monitoring of private conversations. Mechanical, electronic or other devices will be used only in accordance with Policy Statement P-9-35 and the procedures set forth in IRM 9389.

**341.33** (2-8-82) 9781  
**Electronic Listening Devices and Other Monitoring Devices**

**341.331** (2-8-82) 9781  
**General**

(1) The legality of evidence obtained through the use of electronic eavesdropping devices depends on whether or not there has been compliance with the Fourth Amendment. [*Katz v. U.S.*] The Government's placing a transmitter above a phone booth in order to electronically listen to and record a suspect's words violated the privacy upon which he/she relied and thus constituted a "search and seizure" within the Fourth Amendment. Failure to obtain a court order prior to the use of the device rendered the evidence obtained inadmissible. [*Katz v. U.S.*]

(2) A court, pursuant to Title III of the Omnibus Crime Control and Safe Streets Act of 1968 (Public Law 90-35), can authorize electronic surveillance to investigate specific criminal offenses. The offenses for which interceptions of such communications can be authorized by court order are listed in 18 U.S.C. 2516. None of the criminal offenses for which the Criminal Investigation Division has jurisdiction are included in this law. The statute does not authorize wiretaps to investigate the tax crimes of Title 26, the Internal Revenue Code (IRC).

(3) Special agents of the Criminal Investigation Division are qualified to receive and use Title III information obtained by other agencies because they qualify as law enforcement officers as defined by 18 U.S.C. 2510 (7). In certain situations they may investigate several of the violations enumerated in 18 U.S.C. 2516. Once having received Title III information, it can be used for any purpose within the scope of their official duties (18 U.S.C. 2517 (1) and (2)).

(4) Electronic or mechanical devices may be used to overhear or record either telephone or non-telephone conversations with express advance consent of all parties to the conversation. Supervisor approval is not required for such use.

**341.332** (2-8-82)

9781

**Consensual Monitoring**

(1) The term "Consensual Monitoring" as used herein, means the investigative interception, overhearing, or recording of a private conversation by the use of mechanical, electronic or other devices, with the consent of at least one, but not all the participants, as contrasted to "Non-Consensual Monitoring," where no participant consents.

(2) The monitoring of conversations with the consent of one of the participants is an effective and reliable investigative technique but must be sparingly and carefully used. The Department of Justice has encouraged its use by criminal investigators where it is both appropriate and necessary to establish a criminal offense. While such monitoring is constitutionally and statutorily permissible, this investigative technique is subject to careful regulation in order to avoid any abuse or any unwarranted invasion of privacy.

**341.333** (2-8-82)

9781

**Consensual Monitoring of Telephone Conversations**

(1) The monitoring of telephone conversations with the consent of at least one, but not all the participants, requires the authorization of the Chief, Criminal Investigation Division, the Chief, Operations Branch, National Office; or in their absence, the person acting in their place. The Commissioner has designated these officials to authorize consensual monitoring of telephone conversations and this authority may not be redelegated. If these officials cannot be located, their line superiors may grant approval. The line superior for the Chief, Criminal Investigation Division, is the District Director, and the line superior for the Chief, Operations Branch, is the Director, Criminal Investigation Division.

(2) The request for approval will be prepared in accordance with the provisions contained in IRM 9389.2:(2).

(3) Requests for approval should be in writing, or at the discretion of the approving official, may be oral, provided that it is confirmed in writing at the earliest practical time. Approval should not be granted by any designated official until he/she is fully convinced that the investigation warrants the requested monitoring. In any instance where the designated official has some reservation about granting approval, he/she should consult his/her superiors.

(4) Within 10 working days after the completion of the monitoring activities (or attempted monitoring activities) for each specific authorization and each authorization extension, a report will be submitted to the approving authority (Chief, Criminal Investigation Division; or Chief, Operations Branch, National Office), with a copy sent, through channels, including the District Director, to the Director, Criminal Investigation Division. A report will not be submitted if the monitoring occurs with the consent of all parties. The report should complement the information contained in the request for authorization and will be prepared in accordance with the provisions contained in Exhibit 9380-3 of the Internal Revenue Manual.

**341.334** (2-8-82)

9781

**Consensual Monitoring of Non-Telephone Conversations**

(1) The monitoring of a non-telephone conversation with the consent of at least one of the parties requires the advance written authorization by the Attorney General of the United States or the Assistant Attorney in charge of the Criminal Division or the Deputy Assistant Attorneys General of that Division, except for emergency situations, when an official designated by the Commissioner (see 341.334:(1)(b)) may grant prior approval (See policy statement P-9-35) as follows:

(a) All requests for approval must be submitted by the Chief, Criminal Investigation Division through channels including the District Director and may only be signed by the Director, Criminal Investigation Division, or, in his/her absence, the Acting Director. These officials have been designated by the Commissioner and the authority cannot be redelegated. Requests will be submitted in writing whenever

time and communication facilities allow. If appropriate, consideration should be given to transmittal of written requests via telephone communication facilities. Requests will include the same information set forth in IRM 9389.2:(2), except for the telephone number information required in IRM 9389.2:(2)(e). When time and communication facilities are insufficient to accomplish a written request, the needed information may be orally transmitted to the Director, Criminal Investigation Division, who will be responsible for preparation of a written request which is to be forwarded to the Attorney General. An oral request for approval must be confirmed in writing and submitted within two working days after the oral request is made.

(b) If, in the judgment of the Director, Criminal Investigation Division, the emergency needs of an investigation preclude obtaining such advance approval from the Attorney General, he/she may, without having obtained such approval, authorize consensual monitoring of non-telephone conversations. When the Director, Criminal Investigation Division, cannot be reached to grant such emergency approval, the Assistant Director may grant emergency approval. As a general rule, emergency authorization pursuant to this exception will not be granted where the approving official has in excess of 24 hours to attempt to obtain written advance approval from the Attorney General. The authority to grant emergency approval has been delegated by the Commissioner and cannot be redelegated. Confirmation of emergency approval will be done by memorandum through channels by the Director or Acting Director.

(2) Within 10 working days after the completion of the monitoring activities (or attempted monitoring activities) for each specific authorization and each authorization extension, a report will be submitted to the Chief, Criminal Investigation Division, with a copy sent, through channels, including the District Director to the Director, Criminal Investigation Division. This report should complement the information contained in the request for authorization and will be prepared in accordance with the provisions contained in Exhibit 9380-3.

(3) Under certain circumstances, a special agent may be present with representatives of another Federal agency during the course of

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### 341.334

IR Manual

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consensual monitoring of a non-telephonic conversation when Attorney General approval was initially obtained by such representatives. However, where there is active participation or assistance in the consensual monitoring, and where no emergency situation is involved, the special agent should obtain the approval of both the Criminal Investigation Division and the Department of Justice before actively participating with or rendering assistance to the other agency involved. Reports will be prepared and furnished as provided in 341.334:(2).

(4) See IRM 9267.3:(19) with regard to a request by a Government attorney to monitor non-telephone conversations during a grand jury investigation.

### 341.335 (2-8-82)

9781

#### Nonconsensual Monitoring

(1) Non-consensual monitoring of telephone conversations is prohibited. The prohibition applies whether or not the information which may be acquired through such monitoring is intended to be used in any way or to be subsequently divulged outside the Service.

(2) Non-consensual monitoring of non-telephone conversations is prohibited.

### 341.336 (2-8-82)

9781

#### Restrictions on Other Uses of Investigative Techniques and Equipment

(1) The use of transmitters, drip cans or other devices to assist in trailing vehicles is permitted only if the person in lawful possession of the vehicle consents to the installation.

(2) Transmitters or other radio signal sending equipment to facilitate communication between investigators or persons acting under their supervision to coordinate surveillance or raids is permitted without prior supervisory approval.

(3) Investigative devices will not be installed and utilized to intercept, overhear or record conversations in public telephone booths or any type of public telephone installation.

(4) Miniature recorders and radio transmitters will not be used surreptitiously in conducting routine surveys and interviews with third parties.

(5) As provided in IRM 9751:(3), field offices may not procure sensitive-type equipment. Special agents may not use sensitive-type equipment which they have personally procured for investigative purposes.

(6) Permission to employ eavesdropping devices can only be granted to Criminal Investigators (GS-1811 series). The equipment can only be used by them or by personnel acting under their direction. The prohibitions and limitations outlined herein apply equally to non-Service personnel who act at the direction of Criminal Investigators.

(7) Pen registers and other types of telephone number recorders will be used only when authorized by a court order. Unless the Director specifically approves, only IRS owned pen registers and accessory equipment can be used. The procedure for obtaining authorization to use this equipment is contained in IRM 9389.62.

### **341.337** (2-8-82) 9781 **Recording the Proceedings of Public Meetings**

Recording the proceedings of a public meeting is a permissible means of surveillance. However, one must initially establish that the meeting is indeed public. The court in *United States v. Tijerina*, without defining the phrase "public meeting" found substantial support in the record that the meeting was public. The meeting was attended by two newspaper reporters and a radio newscaster. The civic auditorium was set up with a television camera and a loud speaker system. Invited guests were admitted to the meeting after paying a \$2.00 admittance fee and identifying themselves. Estimates of the number varied from 200 to 600. Based on *Tijerina* the following criteria should be among those considered in determining whether or not a meeting is public: where was the meeting held, were members of the press present or involved, were there unreasonable restrictions upon entry, how many people were present, and was public notice of the meeting given?

### **341.4** (4-15-82) 9781 **Right to Record Interview**

(1) An interrogation or conference may be recorded only by a stenographer who is an employee of the Internal Revenue Service. This rule may be waived by the agent's immediate

superior. At the request of the Service or witness, which includes a principal, the superior may authorize the use of a stenographer employed by the United States Attorney, a court reporter of the United States District Court, a reporter licensed or certified by any state as a court reporter or to take depositions, or an independent reporter known to the Service to be qualified to take depositions for use in a United States District Court. The use of this procedure is permissible under IRC 6103(k)(6) since it is a disclosure for investigative purposes. When no stenographer is readily available, mechanical recording devices may be used to record statements by advising the witness, in advance, of the use of the device (implied consent). If the witness objects, the interrogator will refrain from mechanically recording the statement. If the witness elects to mechanically record the conversation, the Service will make its own recording.

(2) A witness or principal is not permitted to have his/her own private or public stenographer present to take shorthand notes or transcribe testimony except that he/she may be permitted to engage a qualified reporter as described in (1) above to be present at his/her expense provided that the Service may secure a copy of the transcript at its expense.

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

(4) See also IRM 9353.

### **342** (1-18-80) 9781 **Prospective Defendants**

#### **342.1** (1-18-80) 9781 **Individual as a Prospective Defendant**

#### **342.11** (1-18-80) 9781 **Statements of An Individual**

(1) The purpose of the Fifth Amendment provision that no person shall be compelled in any criminal case to be a witness against himself/herself is to ensure that no one will be forced in

any manner or at any time to give testimony that may expose him/her to prosecution for a crime. It applies equally whether incrimination be under Federal or state law, and whether the privilege is invoked in the Federal or state courts. [*Murphy v. N.Y. Waterfront Commission*; see also *Malloy v. Hogan*.] If a witness has been compelled to testify in a state court under a grant of immunity, as to matters which could incriminate him/her under Federal law, a Federal court cannot later use that testimony or any fruits of it. [*Murphy v. N.Y. Waterfront Commission*] The grant of immunity applies only to the inability to prosecute the witness based on testimony supplied by him/her. This does not preclude a prosecution of the witness based on the presentation of independent evidence which did not result from his/her own testifying. [*Kastigar v. U.S.*]

(2) A defendant's refusal to testify at the trial for a Federal offense cannot raise any presumption against him/her or be the subject of comment by the prosecution. The right to refuse to answer incriminating questions applies not only to court trials, but to all kinds of criminal or civil proceedings, including administrative investigations. [*George Smith v. U.S.*; *McCarthy v. Arndstein*; *Counselman v. Hitchcock*; *U.S. v. Harold Gross*] The fear of self-incrimination may be with respect to any criminal offense. For example, in the case of Internal Revenue Agent v. Sullivan, a taxpayer was upheld in refusing to produce records in a tax matter on the ground that indictment was pending against him for defrauding the Government on certain contracts.

### 342.12 (1-18-80)

9781

## Books and Records of An Individual

(1) An individual taxpayer may refuse to exhibit his/her books and records for examination on the ground that compelling him/her to do so might violate his/her right against self-incrimination under the Fifth Amendment and constitute an illegal search and seizure under the Fourth Amendment. [*Boyd v. U.S.*; *U.S. v. Vadner*] However, in the absence of such claims, it is not error for a court to charge the jury that it may consider the refusal to produce books and records, in determining willfulness. [*Louis C.*

*Smith v. U.S.*; *Beard v. U.S.*; *Olson v. U.S.*; *Myres v. U.S.*]

(2) The privilege against self-incrimination does not permit a taxpayer to refuse to obey a summons issued under IRC 7602 or a court order directing his/her appearance. He/she is required to appear and cannot use the Fifth Amendment as an excuse for failure to do so, although he/she may exercise it in connection with specific questions. [*Landy v. U.S.*] He/she cannot refuse to bring his/her records, but may decline to submit them for inspection on constitutional grounds. In the *Vadner* case, the government moved to hold a taxpayer in contempt of court for refusal to obey a court order to produce his/her books and records. He refused to submit them for inspection by the Government, basing his refusal on the Fifth Amendment. The court denied the motion to hold him in contempt, holding that disclosure of his assets would provide a starting point for a tax evasion case.

(3) Where records are required be kept as an aid to enforcement of certain regulatory functions enacted by Congress, such records have been held public records, whose production may be compelled without violating the Fifth Amendment. This reasoning has also been applied in some income tax evasion cases. [*Falson v. U.S.*; *Beard v. U.S.*] Other income tax cases have stated that compulsory production of a taxpayer's books and records for use in a criminal prosecution would violate the constitutional protection against self-incrimination. There has not yet been any Supreme Court decision holding the public records doctrine applicable in income tax cases.

(4) The decision of the Supreme Court in *Andresen v. Maryland* appears to have resolved conflicting judicial precedents regarding the use of search warrants to seize books and records of financial transactions. In this case the Court held that the search of Andresen's office for business records, their seizure and subsequent introduction into evidence did not offend the Fifth Amendment. Although the seized records contained statements that the accused had committed to writing, he was never required to say anything. The search for and seizure of these records was conducted by law enforcement officers and introduced at trial by prosecution witnesses.

Text 356.7 for processing questioned documents). However, before suspected originals are actually returned to the person furnishing them, the Government expert should be advised that such return is contemplated and queried as to whether he will be in a position to give effective testimony based upon his past examination of the originals and retention of copies. In the event effective testimony is conditioned on introductions of the originals, such originals should not be voluntarily returned.

(11) See also IRM 9383.3

**342.13** (1-18-80) 9781  
**Duty to Inform Individual of His Constitutional Rights**

**342.131** (1-18-80) 9781  
**General**

Special agents *must* abide by the instructions of IRM 9384 and any related Manual Supplements relative to advising individuals of their constitutional rights.

**342.132** (1-18-80) 9781  
**Non-custodial Interviews**

(1) At the outset of the first official interview with the subject of an investigation, the special agent will properly identify himself/herself as a special agent of the Internal Revenue Service and will produce his/her authorized credentials to the subject for examination. He/she will also state "As a special agent, one of my functions is to investigate the possibility of criminal violations of the Internal Revenue laws, and related offenses."

(2) The special agent will then advise the subject of the investigation substantially as follows:

"In connection with my investigation of your tax liability (or other matter), I would like to ask you some questions. However, first I advise you that under the Fifth Amendment to the Constitution of the United States I cannot compel you to answer any questions or to submit any information if such answers or information might tend to incriminate you in any way. I also advise you that anything which you say and any documents which you submit may be used against you in any criminal proceeding which may be undertaken. I advise you further that you may, if you wish, seek the assistance of an attorney before responding."

(3) If the subject requests clarification, either as to his/her rights or the purpose of the investigation, the special agent will give such explanation as is necessary to clarify the matter for the subject.

(4) If at any stage of an interview the subject indicates that he/she wishes to exercise his/her rights to withhold his/her testimony or records, or to first consult with an attorney, the special agent will terminate the interview.

(5) In each investigation, the special agent will make a contemporaneous memorandum stating when and where the subject was advised of his/her constitutional rights; what additional explanation, if any, was made; how the subject responded; and who was present at the time.

(6) In dealing with a corporate officer or employee who appears to be implicated in an alleged wrongdoing involving a corporation under investigation, the special agent will advise the person of his/her identity and duties at the outset of the special agent's first official meeting, as required by (a) above. The special agent will also advise the person that under the Fifth Amendment to the United States Constitution, he/she cannot be compelled to answer any questions or to submit any personal information which might tend to incriminate him/her in any way. The person also will be advised that anything he/she says and any personal documents which he/she submits may be used in any criminal action which may be undertaken. The person may, if he/she wishes, seek the assistance of counsel before responding. If the person is the custodian of corporate records which are needed for the investigation, he/she will also be advised that he/she is required to produce such records since rights under the Fifth Amendment do not apply to a corporation and its records.

(7) The special agent will not use trickery, misrepresentation or deception in obtaining any evidence or information, nor will he/she use language which might constitute a promise of immunity of settlement of the principal's case, or which might constitute intimidation or a threat.

(8) A special agent, to avert any attack upon the admissibility of any statement or documentary evidence furnished by a subject under investigation, will inform the subject of his/her constitutional rights at the beginning of a formal question and answer interview, even if the subject was previously advised.

(9) Failure to give taxpayers the constitutional warnings prescribed by Internal Revenue procedures has resulted in the exclusion of evidence obtained from the taxpayers. [*U.S. v. Leahey*; *U.S. v. Heffner*]

(5) Subject to the restrictions contained in IRM 0735.1, Handbook of Employee Responsibilities and Conduct, books, records, canceled checks, and other documents may be removed from the custody of a principal or witness when he/she voluntarily agrees to such action. When they are obtained by the use of legal process, and it is found that they contain evidence of the crime, it may be desirable to retain custody of such evidence until the case involved is disposed of. Should the witness or defendant desire access to his/her records, he/she is entitled to examine them, but such examination should be made in the presence of the special agent to preclude the possibility of alterations. Where possession of records is not obtained by legal process but is only by sufferance, they should be returned upon request, at the earliest practicable time. (See policy statement P-4-8.) It was held in *Mason v. Pulliam*, that a taxpayer may withdraw an earlier voluntary consent to a taking of possession by the Service of records for examination and copying, the records being immediately returnable upon the withdrawal of that consent. Thus, the Service is effectively prohibited by this decision from making copies of such records following withdrawal of consent. As a practical matter, consideration should be given to copying the records upon receipt.

(6) Records and documents obtained from the principal or a witness which contain information relevant to the apparent issues in the case under investigation should be transcribed or otherwise copied. The transcriptions or copies should be identified and authenticated as outlined in IRM 9383.4 for later use in the event the originals become unavailable to the government for any reason.

(7) The original records of an individual defendant, in his/her possession, cannot be subpoenaed into court for use against him/her in a criminal trial, because to do so would violate his/her constitutional rights against self-incrimination and render his/her records inadmissible. However, authenticated copies of such records are admissible in criminal proceedings.

(8) When records are obtained from a possible defendant, notation should be made of the circumstances to show that they were furnished voluntarily. Notation should also be made of the chain of custody of records and of all other evidence in order that authenticated identification of the evidence may be made. Special agents are not to sign or initial the records of a possible defendant nor to assure him/

her in any manner whatsoever that his/her tax liability has been correctly reported as of any certain date. They are not to assure him/her that his/her records will be subject to no further examination.

(9) In all instances when a special agent removes books, records, or other documents from the premises of either a taxpayer under investigation or a third party witness, through legal process or agreement, he/she shall issue a receipt, normally Form 2725, Document Receipt (Exhibit 300-12), identifying the items obtained. The receipt shall be prepared in duplicate and the copy retained for the office file of the case so that the identity of the books, records, or documents obtained may at all times be ascertained. When such books, records, or documents are returned to the taxpayer, third party witness or their representatives, the special agent shall obtain the receipt he/she issued with an endorsement thereon acknowledging the return of the items or obtain such an endorsement on the copy of the receipt. The receipt containing his/her endorsement should be kept in the office file on the case. A special agent assigned to assist a grand jury will not use a Form 2725 when securing documents pursuant to a grand jury subpoena, see 9267.3:(7).

(10) When a taxpayer has voluntarily submitted an altered document and subsequently requests its return, the special agent should consider not complying with the request. Furthermore, it is doubtful that a court will give redress where the party seeking relief is attempting to perpetrate a fraud, and is asking the court to aid in the attempt by forcing the Government to return the altered document. Legible copies may not suffice for requisite examination regarding handwriting (pressure on paper), ink analysis (the composition and dating of the fluid and use of an infrared image converter), type-writer determination (the idiosyncrasies of certain key strikes), paper analysis (watermarks indicating source and availability), etc. Nonetheless, when it becomes known or suspected that a document has been altered, the required expert analysis should be undertaken as soon as possible and the document should then be returned to the taxpayer, provided such return would not foreclose proof of an alteration (See

(10) If the subject of a grand jury investigation is interviewed by a special agent acting in the capacity of an assistant to the Attorney for the Government, advice regarding constitutional rights should be governed by those procedures applicable to grand jury investigations rather than by the procedures applicable to investigations of the Criminal Investigation Division. In this regard, the facts that the interview is conducted outside of the actual presence of the grand jury and that there is a related investigation are not relevant. Clarification as to advice appropriate to a particular case should be sought as needed from the Attorney for the Government.

(11) See also IRM 9384.2

### 342.133 (5-9-80)

9781

#### Custodial Interrogations

(1) The Supreme Court has held that when an individual is taken into custody or otherwise deprived of his/her freedom by the authorities, he/she must be warned prior to any questioning that he/she has the right to remain silent, that anything he/she says can be used against him/her in a court of law, that he/she has the right to the presence of an attorney, and that if he/she cannot afford an attorney one will be appointed for him/her prior to any questioning if he/she so desires. Opportunity to exercise these rights must be afforded to him/her throughout the interrogation. After such warnings have been given, and such opportunity afforded him/her, the individual may knowingly and intelligently waive these rights and agree to make a statement. But unless and until such warnings and waiver are demonstrated by the prosecution at trial, no evidence obtained as a result of interrogation may be used against the individual. [*Miranda v. Arizona*; *Escobedo v. Illinois*]

(2) Procedures to be followed by special agents in the interview of persons in custody are as follows:

(a) Prior to any questioning the person in custody must be warned in clear and unequivocal terms that he/she has a right to remain silent, that any statements he/she makes may be used as evidence against him/her and that he/she has a right to the presence of an attorney, either retained or appointed.

(b) If the person in custody indicates that he/she does not wish to be interviewed, there can be no questioning.

(c) If the person in custody indicates during questioning that he/she wishes to say no more, the interview must cease.

(d) If the person in custody indicates that he/she wishes to consult with an attorney before speaking, there can be no questioning until that consultation takes place.

(e) If the person in custody indicates during questioning that he/she wants an attorney before speaking further, the interview must cease until an attorney is present and the person in custody has had an opportunity to consult with him/her.

(3) It is mandatory that enforcement personnel comply with the safeguards enumerated in (2) above. However, these safeguards do not apply to the normal administrative processing of an accused after he/she has been taken into custody. He/she may be photographed and fingerprinted, and may still be asked to furnish information necessary for the filling out of administrative forms and the keeping of agency records. Further, these safeguards do not apply to an interview of one person which develops evidence solely against another; with interviews to secure information for the timely protection of life, property or the national security; or with spontaneous or volunteered statements of any kind.

(4) To secure the admissibility of statements made during in-custody interrogations, certain procedural safeguards are required. Exhibit 300-5 is a copy of Form 5228, Waiver of Right to Remain Silent and of Right to Advice of Counsel. The statement of rights contained therein sets forth the warning which must be given to a person in custody prior to an interrogation. This statement also appears in Document 5661 in card form. If practicable, the waiver form should be signed by the person to be interrogated before the interrogation is initiated. The original Form 5228 is to be attached to and made a part of the case report furnished to the United States Attorney, the first copy given to the person signing the form, the second copy retained by the Chief, Criminal Investigation Division, and the third copy retained by the agent who conducted the interrogation. When it is impossible or impracticable to obtain a signed waiver, an oral waiver may be accepted. In such cases, the warning given and the defendant's waiver should be witnessed by another agent or other credible person, or sound or otherwise recorded. If a written statement is obtained from the person interrogated after he/she has waived his/her right to remain silent, either by execution of the waiver agreement, or otherwise, it should contain an introductory para-

graph which indicates that the person was advised of his/her right to remain silent and of the right to counsel and that he/she waived the rights and voluntarily made the statement.

(5) Spontaneous or volunteered statements of any kind are not barred by the Fifth Amendment and are not affected by the Miranda and Escobedo decisions.

(6) In the Mathis case, the Supreme Court held that statements given by a person, who is in custody or otherwise deprived of his/her freedom, to a revenue agent conducting a tax examination, are inadmissible unless the person has been advised of his/her constitutional rights. This applies though there is no relationship between the tax examination and the reason for custody. [*Mathis v. U.S.*]

(7) See also IRM 9447.3 through 9447.5

### 342.14 (9-8-80)

9781

#### Voluntary Disclosure

(1) Prior to January 10, 1952, under the so-called "voluntary disclosure policy" then in effect, the Treasury Department refrained from recommending prosecution of persons who made voluntary disclosures of their tax violation before the beginning of investigation. Although this "policy" has been abandoned and a promise of immunity is not enforceable, [*White v. U.S.*] some courts have held that taxpayers' rights under the Fifth Amendment may be violated where testimony has been given or records furnished in reliance upon express or implied promises that prosecution will not be undertaken. [*Daniel Smith v. U.S.*] In the Daniel Smith case, the defendant had objected to admission into evidence of a net worth statement, on the ground that it had been given by his accountant to the Government agent upon the promise that the case would be closed if the statement and a check for the tax deficiency would be submitted. It was held that the court properly instructed the jury to reject the statement and all evidence obtained through it, if it found that trickery, fraud, or deceit were practiced upon the taxpayer or his accountant.

(2) Present Service Policy is found in Policy Statement P-9-2. It provides that although the Service Policy does not necessarily preclude prosecution, IRS will carefully consider and weigh the voluntary disclosure, along with all other facts and circumstances, in deciding whether or not to recommend prosecution.

### 342.15 (1-18-80)

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#### Waiver of Constitutional Rights

(1) The privilege against self-incrimination must be specifically claimed, or it will be considered to have been waived. [*Lisansky v. U.S.*] In *Nicola v. U.S.* the taxpayer permitted a revenue agent to examine his books and records. The taxpayer was indicted for income tax evasion and invoked his constitutional rights under the Fifth Amendment for the first time at the trial, by objecting to the revenue agent's testimony concerning his findings. The court said, on the question of waiver:

"But he did not refuse to supply the information required. Did he waive his privilege? The constitutional guarantee is for the benefit of the witness and unless invoked is deemed to be waived. *Vajtauer v. Commissioner of Immigration* (supra). Was it necessary for the defendant to invoke it in the first place before the revenue agent or could he wait until his trial on indictment for attempting to evade a part of his income tax? (Cases cited) \*\*\* it was necessary for him to claim immunity before the Government agent and refuse to produce his books. After the Government had gotten possession of the information with his consent, it was too late for him then to claim constitutional immunity."

(2) A taxpayer who makes verbal statements or gives testimony to agents during an investigation, or at a Tax Court trial, may still rely upon his/her constitutional privilege and refuse to testify at trial of his/her indictment for tax evasion. [*U.S. v. Vadner*] However, any statements inconsistent with his/her innocence may be used against him/her as admissions. [4 *Wigmore, Evidence*, (3d Ed.), Sec. 1048]

(3) If a witness has testified at a trial and voluntarily revealed incriminating facts, he/she cannot in the same proceeding avoid disclosure of the details. [*Rogers v. U.S.*; *Ballantyne v. U.S.*] However, waiver of constitutional rights will not lightly be inferred, and no specific language is required in asserting them. [*George Smith v. U.S.*; *Quinn v. U.S.*; *Emspak v. U.S.*] In the language of the Quinn case:

"It is agreed by all that a claim of privilege does not require any special combination of words. Plainly a witness need not have the skill of a lawyer to invoke the protection of the Self Incrimination Clause \*\*\* As everyone agrees, no ritualistic formula is necessary in order to invoke the Privilege."

(4) Courts have held in income tax evasion cases that there has been no waiver of constitutional rights where taxpayers have given verbal information or exhibited books and records, during so-called "routine audits," as a result of deception practiced by Government agents. [*U.S. v. Lipshitz*; *U.S. v. Guerrina*] Neither may the Government use information illegally obtained as a wedge for prying incriminating evidence from the taxpayer, or, as a "lever to spring consent." [*U.S. v. Watson A. Young*]

**342.16** (1-18-80)

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**Right to Counsel**

(1) A defendant's right to counsel in a criminal prosecution is guaranteed by the Sixth Amendment to the United States Constitution.

(2) The Administrative Procedure Act (Section 6) provides:

"Any person compelled to appear in person before any agency or representative thereof shall be accorded the right to be accompanied, represented, and advised by counsel or, if permitted by the agency, by other qualified representative. Every party shall be accorded the right to appear in person or by or with counsel or other duly qualified representative in any agency proceeding."

(3) Courts have indicated that under the above section persons summoned to appear before special agents of the Criminal Investigation Division may be represented by counsel. [*Backer v. Commissioner*] However, the courts are in conflict about limitations on the right to counsel. Text 343.3 concerns the right of a third party to counsel, and furnishes guidelines to follow when this right is invoked.

**342.17** (11-7-80)

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**Powers of Attorney**

(1) The requirements for the filing of a power of attorney or tax information authorization by taxpayer representatives are outlined in IRM 4055 and in Subpart E, Conference and Practice Requirements (26 CFR, Part 601).

(2) Upon receipt, the original of any power of attorney and/or tax authorization will be associated with the case file. A copy will be forwarded to the applicable service center, Taxpayer Relations Branch, Attention: Power of Attorney Unit. This requirement applies to all such documents including those received prior to these instructions. It also applies to all subsequently filed instruments, including revocations, substitutions, etc. This procedure will be followed unless they are clearly intended for one-time use, such as those submitted with Freedom of Information requests or Congressional inquiries. In these instances, no copy should be forwarded to the service center and the original should be associated with the correspondence.

(3) Regulations require submission of sufficient copies of authorizations from representatives for each tax matter involved. Each return for a taxable period represents a separate tax matter. An attorney or certified public accountant, however, is required to file only one declaration for a particular party represented, regardless of the number of tax matters involved (P.L. 89-332 and 26 C.F.R. 601.502(b)). Therefore, it

may be necessary to make copies of authorizations.

(4) See also IRM 9359.2

**342.18** (1-18-80)

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**Representation by Enrolled Persons, Attorneys and Certified Public Accountants and Others**

(1) Service employees will recognize persons who are not attorneys nor certified public accountants as representatives of taxpayers only upon presentation of a permanent or temporary enrollment card authorizing practice as an agent, issued under the provisions of Treasury Department Circular 230, provided such enrolled person is not currently under suspension or disbarment from practice before the IRS. Upon a satisfactory showing of proof, Service employees will also recognize the following:

(a) an individual appearing on his/her own behalf;

(b) an individual representing another individual who is his/her regular full-time employer;

(c) an individual representing a partnership of which he/she is a member or a regular full-time employee;

(d) an individual representing without compensation a member of his/her immediate family;

(e) an individual representing a corporation (including parents, subsidiary or affiliated corporations) of which he/she is a bona fide officer or regular full-time employee;

(f) an individual representing a trust, receivership, guardianship or estate of which he/she is its trustee, receiver, guardian, administrator, executor or regular full-time employee;

(g) an individual representing any governmental unit, agency or authority of which he/she is an officer or regular employee acting in the course of his/her official duties; and

(h) individuals participating in rule making as provided by Section 4 of the Administrative Procedure Act (5 U.S.C. 1003).

(2) Service employees will recognize attorneys and certified public accountants as representatives of taxpayers if they file a written declaration containing the following information, provided that the declarant is not currently under suspension or disbarment from practice before the IRS.

(a) A statement that the declarant is currently qualified as a member in good standing of the bar of the highest court, or is a certified public accountant qualified to practice in any State, Possession, Commonwealth, Territory or the District of Columbia, specifying the bar or bars in which he has membership or the Governmental entity or entities in which he is so certified;

(b) The declarant's full name, address, and telephone number;

(c) A statement that the declarant is authorized to represent the particular party on whose behalf he/she purports to represent, and the name and address of that party.

(3) Declarations received from attorneys or certified public accountants will be associated and filed with the tax returns or other matters involved in the same manner as powers of attorney are filed. A declaration once filed with the appropriate tax return(s) or other matter(s) will be presumed to remain valid unless the Service has evidence to the contrary. Thus, a declaration will ordinarily be requested regarding a particular matter only upon the first appearance before the Service of an attorney or certified public accountant.

(4) An alphabetical computer printout listing by districts of agents enrolled to practice before the Service is maintained in the district Examination offices and is available to special agents to verify that a person claiming to be an enrolled agent is currently enrolled to practice before the Service.

(5) See also IRM 9359.1.

### 342.19 (1-18-80)

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#### Dealing with Representatives

(1) When a taxpayer, or his/her representative who has a power of attorney or tax information authorization on file with the Service, and who is not disqualified from practicing before the IRS, requests, orally or in writing, that contacts with the taxpayer by Service personnel be made through the representative, such request will be complied with, except as provided in (2) below.

(2) When repeated attempts to comply with a request that all contacts be made through a taxpayer's representative result in unreasonable delays or hindrances to the investigation, the special agent who is assigned to the matter will discuss the situation with the Chief, Criminal

Investigation Division, and request permission to contact the taxpayer direct. The Chief will carefully consider the facts and circumstances concerning the matter and make a determination as to whether or not the request by the taxpayer, or his/her representative, should continue to be honored by the Service. Where the Chief grants permission to deviate from the request of the taxpayer or his/her representative, the case file should contain sufficient facts to show how the investigation or examination was being delayed or hindered by complying with the request of the taxpayer or his/her representative. Except as provided in (3) below, the Chief will provide the taxpayer and the representative with a written notice of the permission to bypass, in advance of direct contact with the taxpayer, briefly stating the reasons for granting such permission.

(3) The sole exception to the requirement for advance notification is the situation of extreme exigency in which immediate, direct contact with the taxpayer must be made, and the time required to issue advance notice of bypass would result in severe prejudice to the taxpayer or the investigation. Under those circumstances, the Chief will consult with District Counsel before granting authority to bypass the representative without advance notification. The case file should contain sufficient facts to support the decision.

(4) Authorization to bypass a representative and to contact the taxpayer direct, with or without advance notice, does not relieve the Service of responsibility for continuing to notify and advise the representative of future appointments with the taxpayer, nor recognizing the representative if the representative makes an appearance.

(5) See also IRM 9359.2.

### 342.2 (3-18-81)

9781

#### Partnership and Other Unincorporated Association Books and Records

(1) The original rule regarding compulsory production of partnership records was set forth in the Boyd case, [*Boyd v. U.S.*] which held that an invoice for merchandise imported by a partnership was the private paper of a defendant partner, and that its production could not be compelled without violating the Fifth Amendment.

(2) The Supreme Court has ruled that an individual cannot rely upon the privilege to avoid producing the records of a collective entity which are in his/her possession, even if these records might incriminate him/her personally (*Bellis v. U.S.*). A former partner in a small, three-partner law firm could not invoke Fifth Amendment rights to justify his refusal to produce the partnership's subpoenaed financial records. The firm was an independent entity and not the personal legal practice of the individual partners, and he held the records in a representative capacity. The partnership existed for nearly 15 years, maintained a bank account in its name, and held itself out as a distinct entity.

(3) Similarly, following the principal that an unincorporated labor union with many members was a large, impersonal partnership with the characteristics of a corporation, the Supreme Court held that an officer could be compelled to produce union records in his possession. [*U.S. v. White*] The court stated the rule thus:

"Whether one can fairly say under all the circumstances that a particular type of organization has a character so impersonal in the scope of its membership and activities that it cannot be said to embody or represent the purely private or personal interests of its constituents, but rather to embody their common or group interests only. If so, the privilege cannot be invoked on behalf of the organization or its representatives in their official capacity."

(4) On the other hand, the Supreme Court indicated in *Bellis v. U.S.* that cases dealing with small, family type partnerships might be treated differently. (In *Re Subpoena Duces Tecum; U.S. v. Slutzky*)

(5) Partnership books and records voluntarily submitted by one partner may be used in evidence against the other partners without violating their constitutional rights.

(6) A trustee can be directed to comply with a summons which calls for the production of certain books and records of the trust. The trust is a separate entity and a taxpayer, the trustee, could not claim the Fifth Amendment privilege since he/she held the books in a representative rather than a personal capacity. (*Mullins v. Angiulo*)

### 342.3 (1-18-80)

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#### Corporations

### 342.31 (1-18-80)

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#### Corporation Books and Records

(1) The privilege against self-incrimination under the Fifth Amendment does not apply to corporations. [*Wilson v. U.S.*; *Hale v. Henkel*] The theory for this is that the State, having created the corporation, has reserved the power to inquire into its activities, and that an inani-

mate corporate body should not be afforded the same protection as a natural person in avoiding incrimination. A corporate officer may not refuse to produce corporate records held by him/her in an official capacity, even though their production may incriminate him/her or the corporation. Courts have applied the theory that a corporation is a separate person and have maintained that an individual may not withhold the corporate records nor object to their use against him/her under the self-incrimination doctrine, even if he/she is the only stockholder or the sole director of all the corporate activities. [*Walter B. Grant v. U.S.*; *Fuller v. U.S.*] Neither may a corporate officer refuse to identify the corporate records under oath on the ground of possible self-incrimination. [*Carolene Products Co. v. U.S.*; *U.S. v. Austin-Bagley Corporation*; *U.S. v. Lawn, supra*] A Subchapter S corporation, [*U.S. v. Richardson*] as well as a professional association, [*U.S. v. Theodore Accounting Service, P.A.*] can be required to produce their books and records.

(2) A corporation is protected against illegal searches and seizures under the Fourth Amendment. For example, in *Silverthorne Lumber Co. v. U.S.*, although the corporate officers were in custody, a United States Marshal visited the corporation's office without a search warrant and made a clean sweep of all books, papers, and documents. The court held that this was an illegal search and seizure, prohibited by the Fourth Amendment.

### 342.32 (1-18-80)

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#### Rights of Corporation Officers

The mere fact that a corporate officer may not refuse to produce corporate records does not take away the constitutional protection which is the right of any individual. He/she may still refuse to give testimony or exhibit personal records which may tend to incriminate him/her as an individual, [*U.S. v. Lawn*; *Fuller v. U.S.*] or to testify regarding the whereabouts of corporate records not in his/her possession. [*Curcio v. U.S.*; *U.S. v. Pollock*] The *Lawn* case, involved the obligations and rights of corporate officers as well. On this point the court made the following comment:

"The Government, beyond requiring the production and identification of the corporate records, does not have an unbridled right to interrogate the corporate officer, without his constitutional privilege being available to him."

### 342.4 (1-18-80)

9781

#### District Criminal Investigation Conference

(1) A district Criminal Investigation conference will not be conducted as a matter of course. However, a taxpayer who may be the

subject of a criminal prosecution recommendation will be afforded a district Criminal Investigation conference when he/she requests one or where the Chief, Criminal Investigation Division, determines that such a conference will be in the best interest of the Government. (See policy statement P-9-32.)

(2) No district Criminal Investigation conference will be held if the taxpayer is the subject of a grand jury investigation in which special agents of the Criminal Investigation Division are assisting the Attorney for the Government.

(3) The Chief, Criminal Investigation Division, or his/her designee will offer the conference at the headquarters office of the District Director or at some other location convenient for both the principal, or his/her representative, and the Government.

(4) The conference will be held by the Chief, Criminal Investigation Division, or his/her designee. The Chief may make standing designations or make designations on a case-by-case basis. Where feasible, the Chief's designee should be the Assistant Chief or Staff Assistant, in districts which have such positions. However, the designee may be a group manager or an experienced special agent.

(5) Under no circumstances shall the designee be the special agent who investigated the case, although he/she and any cooperating IRS employee may attend the conference unless their presence is not deemed advisable by the Chief, Criminal Investigation Division, or the designee.

(6) The Chief, Criminal Investigation Division, shall not hold the conference if he/she has participated in the investigation to such an extent that he/she might appear to be a prejudiced party. Should this occur and there is no designee available (see (4) above) the Chief will inform the ARC (Criminal Investigation) of the circumstances and request the ARC to designate someone to hold the conference.

(7) A summary will be prepared of the conference proceeding pursuant to the procedure outlined in IRM 9353 for preparation of a memorandum of information. The conference may be recorded verbatim by an IRS stenographer or other individuals designated in IRM 9353:(3) if deemed advisable because of the importance of the case or for other serious reasons, such as prior refusal of the principal to provide the investigating officer with information relating to the case.

(8) At this conference, which should usually be held before the special agent's report is typed in final form, the IRS representative will inform the taxpayer by a general oral statement of the alleged fraudulent features of the case, to the extent consistent with protecting the Government's interests, and, at the same time, making available to the taxpayer sufficient facts and figures to acquaint him/her with the basis, nature, and other essential elements of the proposed criminal charges against him/her (See Policy Statement P-9-32.) However, extreme care must be exercised to ensure that no information is disclosed to the principal which might reveal or indicate the identity of confidential informants, endanger prospective witnesses, or be detrimental to subsequent prosecution of the case.

(9) When a taxpayer's representative, who has furnished a power of attorney or tax information authorization, attends a district Criminal Investigation conference without the taxpayer, he/she is entitled to receive, to the extent authorized by the taxpayer, the same information that would be furnished if the taxpayer were present.

(10) See Policy Statement P-9-32 regarding persons who may accompany the taxpayer to a district Criminal Investigation conference.

### 343 (1-18-80) 9781 Third Party Witnesses

#### 343.1 (1-18-80) 9781 Compelled Testimony or Production of Records of Third Party Witness

IRC 7602 furnishes the authority to compel testimony of third persons and their production of books and records, by issuance of summonses. Restrictions upon that authority as they apply to third parties will be discussed in the remainder of this text and in 344.

#### 343.2 (1-18-80) 9781 Rights of Third Party Witness Against Self-Incrimination

(1) A third party witness may not refuse to testify but may decline to give answers that may incriminate him/her [*Hoffman v. U.S.*; *U.S. v. Benjamin*; *O'Connell v. U.S.*] under Federal or state law. [*Murphy v. N.Y. Waterfront Commission*; *Malloy v. Hogan*]

(2) The privilege applies not only to answers or documents which would support a conviction. It extends even to those which provide a link in the chain of evidence which could be incriminatory, and is available if there is a reasonable possibility that an answer might tend to incriminate. [*Blau v. U.S.*; *Hoffman v. U.S.*] As stated by the Supreme Court in *Hoffman v. U.S.* "To sustain the privilege, it need only be evident from the implications of the question, in the setting in which it is asked, that a responsive answer to the question or an explanation of why it cannot be answered might be dangerous because injurious disclosure could result." However, a witness is not justified in refusing to answer questions on the ground of possible self-incrimination where the statute of limitations has barred the possibility of prosecution. [*U.S. v. Goodman*]

(3) It is improper for the prosecution to ask a witness in a criminal trial any question calculated to bring out the answer that the witness had refused to incriminate himself/herself in a prior trial or proceeding. [*U.S. v. Merle Long*; *U.S. v. Harold Gross*; *Grunewald v. U.S.*]

(4) When a witness appears to be implicated in a criminal violation, he/she should be timely advised of his/her constitutional rights.

### 343.3 (5-27-80)

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#### Right to Counsel of Third Party Witnesses

(1) The Administrative Procedure Act, 5 U.S.C. 555(b) provides, in part, "A person compelled to appear in person before an agency or representative thereof is entitled to be accompanied, represented and advised by counsel or, if permitted by the agency, by other qualified representative . . ." Further, Policy statement P-9-31 provides "A witness in a Criminal Investigation function investigation has the right to have counsel present when questioned, to represent and advise him/her."

(2) A witness who appears in response to a summons must be afforded the opportunity to be represented by an attorney. The right to an attorney of one's own choice is generally an absolute right which may only be modified in the event of obstruction of the orderly inquiry process by improper conduct or tactics by the attorney.

### 343.4 (1-18-80)

9781

#### Right of Third Party Witness to Refuse Unreasonable Request

(1) Although the restrictions placed upon examination by IRC 7605(b) apply only to the taxpayer under examination, as explained in 367.33, the courts will also prevent arbitrary, unreasonable, irrelevant, and oppressive demands upon third parties for production of their records. [*First National Bank of Mobile v. U.S.*; *Hubner v. Tucker*]

(2) In the *First National Bank of Mobile* case, an Internal Revenue agent attempted to have the bank produce any and all books, papers, and records in connection with a tax investigation, *irrespective of whether such records also pertain to similar transactions with other persons or firms during the said years 1940 to 1945, inclusive* (italics by court). The Court of Appeals denied the request, stating:

"A third party should not be called upon to produce records and give evidence under the statute unless such records and evidence are relevant to, or bear upon, the matter being investigated."

(3) *Hubner v. Tucker* concerned a summons issued by a special agent to a third party in general terms, to produce all books and records relating to transactions with the taxpayer, including miscellaneous records. There was no specification of the particular documents, which precluded a showing, according to the court, that any one of them was relevant to the investigation. The court said:

" . . . so far as a member of the general public is concerned, not a taxpayer, the privilege against an unreasonable search and seizure should be given great effect. . . . We do not believe that, simply because some taxpayer may have had a grocery account entered upon the books of the grocer, the intention of Congress was to allow the internal Revenue Service to investigate all the records of the grocer on the theory that some of them might be relevant to the inquiry of the tax status of another person."

### 343.5 (1-18-80)

9781

#### Witnesses And Records From Foreign Countries

(1) Non-resident aliens physically present in foreign country cannot be compelled to appear as witnesses in a United States Court. Since the Constitution requires confrontation of adverse witnesses in criminal prosecutions, the testimony of such aliens may be used in court only if they agree to appear at the trial. However, certain testimony for the admissibility of documents is allowed without a "live" appearance in the United States under 18 USC 3491. Also, 28 USC 1783 provides a Federal court with sub-