HANDBOOK FOR SPECIAL AGENTS

CRIMINAL INVESTIGATION
INTELLIGENCE DIVISION
INTERNAL REVENUE
SERVICE

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

MR. MORTIMER CAPLIN
INTERNAL REVENUE SERVICE
COMMISSIONER
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Chapter 200
Statutory Provisions

210 (1-18-80) 9781

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

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

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

221.1 (1-18-80) 9781
Effective Date and Application
Chapter 75 of the Internal Revenue Code of 1954, entitled Crimes, Other Offenses, and Forfeitures, is effective for offenses committed after August 16, 1954. The following penal sections of chapter 75 apply to all taxes imposed by Title 26, United States Code (Internal Revenue Code of 1954) unless the particular section states that it applies to a specific tax.

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

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

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

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

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

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

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

[Applies to withholding statements required of employers.]

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

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

“Any individual required to supply information to his employer under section 3402 who willfully supplies false or fraudulent information, or who willfully fails to supply information thereunder which would require an increase in the tax to be withheld under section 3402, shall, in lieu of any other penalty provided by law (except the penalty provided by section 6682), upon conviction thereof, be fined not more than $500, or imprisoned not more than 1 year, or both.” See text 417 and IRM 9212. The Economic Recovery Act of 1981 raised the fine from $500 to $1,000 for acts and failures to act after December 31, 1981.
221.7 (5-9-80)
IRC 7206. Fraud and False Statements

"Any person who—

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

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

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

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

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

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

(B) Withholding, Falsifying, and Destroying Records.—Receives, withholds, destroys, mutilates, or falsifies any book, document or record, or makes any false statement, relating to the estate or financial condition of the taxpayer or other person liable in respect of the tax; shall be guilty of a felony and, upon conviction thereof, shall be fined not more than $5,000, or imprisoned not more than 3 years, or both, together with the costs of prosecution."

See text 418.1 and 418.2 and IRM 9212.

221.8 (5-9-80)
IRC 7207. Fraudulent Returns, Statements, or Other Documents

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

221.9 (5-9-80)
IRC 7210. Failure to Obey Summons

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

221.(10) (5-9-80)
IRC 7212. Attempts to Interfere With Administration of Internal Revenue Laws

"(a) Corrupt or Forcible Interference.—Whoever corruptly or by force or threats of force (including any threatening letter or communication) endeavors to intimidate or impede any officer or employee of the United States acting in an official capacity under this title, or in any other way corruptly or by force or threats of force (including any threatening letter or communication) obstructs or impedes, or endeavors to obstruct or impede, the due administration of this title, shall, upon conviction thereof, be fined not more than $5,000, or imprisoned not more than 3 years, or both, except that if the offense is committed only by threats of force, the person convicted thereof shall be fined not more than $3,000, or imprisoned not more than 1 year, or both. The term "threats of force," as used in this subsection, means threats of bodily harm to the officer or employee of the United States or to a member of his family. See text 511 and IRM 9212.
"(b) Forcible Rescue of Seized Property.—Any person who forcibly rescues or causes to be rescued any property after it shall have been seized under this title, or shall attempt or endeavor so to do, shall, excepting in cases otherwise provided for, for every such offense, be fined not more than $500, or not more than double the value of the property so rescued, whichever is the greater, or be imprisoned not more than 2 years." See text 512.

221.(11) (1-18-80) 9781
Other Criminal Penalties
See Exhibit 200–1 for a listing of other criminal penalties.

221.(12) (5-9-80) 9781
IRC 7215. Offenses With Respect to Collected Taxes
"(a) Penalty.—Any person who fails to comply with any provision of section 7512(b) shall, in addition to any other penalties provided by law, be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than $5,000, or imprisoned not more than one year; or both, together with the costs of prosecution.

"(b) Exceptions.—This section shall not apply—

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

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

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

221.(13) (1-18-80) 9781
IRC 7512. Separate Accounting for Certain Collected Taxes, Etc.
"(a) General Rule.—Whenever any person who is required to collect, account for, and pay over any tax imposed by subtitle C or by chapter 33—

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

"(2) is notified, by notice delivered in hand to such person of any such failure, "then all the requirements of subsection (b) shall be complied with. In the case of a corporation, partnership, or trust notice delivered in hand to an officer, partner, or trustee, shall, for the purposes of this section, be deemed to be notice delivered in hand to such corporation, partnership, or trust to all officers, partners, trustees, and employees thereof.

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

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

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

222.1 (1-18-80) 9781
Introduction
The following penal sections of Title 18 apply to violations that may be encountered in connection with Criminal Investigation Division investigations.

222.2 (1-18-80) 9781
Section 2. Principals
"(a) Whoever commits an offense against the United States, or aids, abets, counsels, commands, induces or procures its commission, is punishable as a principal.

"(b) Whoever willfully causes an act to be done, which if directly performed by him or another would be an offense against the United States, is punishable as a principal." See IRM 9213.
222.3 (1-18-80)
Section 3. Accessory After the Fact

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

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

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

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

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

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

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

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

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

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

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

222.7 (5-9-80)
(Reserved)

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

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

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

"Shall be fined not more than $5,000 or imprisoned not more than five years, or both." See IRM 9213.
222.9 (1-18-80)  
Section 286. Conspiracy to Defraud the Government With Respect to Claims

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

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

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

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

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

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

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

“If two or more persons in any State, Territory, Possession, or District conspire to prevent, by force, intimidation, or threat, any person from accepting or holding any office, trust, or place of confidence under the United States, or from discharging any duties thereof, or to induce by like means any officer of the United States to leave the place, where his duties as an officer are required to be performed, or to injure him in his person or property on account of his lawful discharge of the duties of his office, or while engaged in the lawful discharge thereof, or to injure his property so as to molest, interrupt, hinder, or impede him in the discharge of his official duties, each of such persons shall be fined not more than $5,000 or imprisoned not more than six years, or both.” See IRM 9213.

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

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

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

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

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

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

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

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

“Whoever transmits to, or presents at any office or officer of the United States, any such writing in support of, or in relation to, any account or claim, with intent to defraud the United
States, knowing the same to be false, altered, forged, or counterfeited—

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

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

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

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

"Whoever, knowingly and with intent to defraud the United States, or any agency thereof, possesses any false, altered, forged, or counterfeited writing or document for the purpose of enabling another to obtain from the United States, or from any agency, officer or agent thereof, any sum of money, shall be fined not more than $10,000 or imprisoned not more than five years, or both." See Text 318.4 and IRM 9213.

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

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

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

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

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

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

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

"Shall except as otherwise provided by law, be fined not more than $300 or imprisoned not more than one year, or both." See Tex1 411.5 and IRM 9213.

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

"Whoever corruptly, or by threats of force, or by any threatening letter or communication, endeavors to influence, intimidate, or impede any witness, in any court of the United States or before any United States magistrate or other committing magistrate, or any grand or petit juror, or officer in or of any court of the United States, or officer who may be serving at any examination or other proceeding before any United States magistrate or other committing magistrate, in the discharge of his duty, or injures any party or witness in his person or property on account of his attending or having attended such court or examination before such officer, magistrate, or other committing magistrate, or on account of his testifying or having testified to any matter pending therein, or injures any such grand or petit juror in his person or property on account of any verdict or indictment assented to by him, or on account of his being or having been such juror, or injures any such officer, magistrate, or other committing magistrate in his person or property on account of the performance of his official duties, or corruptly or by threats or force, or by any threatening letter or communication, influences, obstructs, or impedes, or endeavors to influence, obstruct, or impede, the due administration of justice, shall not be fined more than $5,000 or imprisoned not more than five years, or both."
Section 1510. Obstruction of Criminal Investigations

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

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

(1) Shall be fined not more than $5,000 or imprisoned not more than five years, or both.

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

See Text 411.6.

Section 1621. Perjury Generally

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

See IRM 9213.

Section 1622. Subornation of Perjury

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

See IRM 9213.

Section 1623. False Declarations Before Grand Jury or Court

(a) Whoever under oath in any proceeding before or ancillary to any court or grand jury of the United States knowingly makes any false material declaration or makes or uses any other information, including any book, paper, document, record, recording, or other material, knowing the same to contain any false material declaration, shall be fined not more than $10,000 or imprisoned not more than five years, or both.

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

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

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

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

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

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

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

See IRM 9213.

(Reserved)
Section 1955. Prohibition of Illegal Gambling Businesses

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

"(b) As used in this section—

"(1) 'illegal gambling business' means a gambling business which—

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

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

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

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

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

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

Section 1962. Prohibited Activities of Racketeer Influenced and Corrupt Organizations

"(a) It shall be unlawful for any person who has received any income derived, directly or indirectly, from a pattern of racketeering activity or through collection of an unlawful debt in which such person has participated as a principal within the meaning of section 2, title 18, United States Code, to use or invest, directly or indirectly, any part of such income, or the proceeds of such income, in acquisition of any interest in, or the establishment or operation of, any enterprise which is engaged in, or the activities of which affect, interstate or foreign commerce. A purchase of securities on the open market for purposes of investment, and without the intention of controlling or participating in the control of the issuer, or of assisting another to do so, shall not be unlawful under this subsection if the securities of the issuer held by the purchaser, the members of his immediate family, and his or their accomplices in any pattern or racketeering activity or the collection of an unlawful debt after such purchase do not amount in the aggregate to one percent of the outstanding securities of any one class, and do not confer, either in law or in fact, the power to elect one or more directors of the issuer.

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

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

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

Section 1963. Criminal Penalties for Racketeer Influenced and Corrupt Organizations

"(a) Whoever violates any provision of section 1962 of this chapter shall be fined not more than $25,000 or imprisoned not more than twenty years, or both, and shall forfeit to the United States (1) any interest he has acquired or maintained in violation of section 1962, and (2) any interest in, security of, claim against, or property or contractual right of any kind affording a source of influence over, any enterprise which he has established, operated, controlled, conducted, or participated in the conduct of, in violation of section 1962.
“(b) In any action brought by the United States under this section, the district courts of the United States shall have jurisdiction to enter such restraining orders or prohibitions, or to take such other actions, including, but not limited to, the acceptance of satisfactory performance bonds, in connection with any property or other interest subject to forfeiture under this section, as it shall deem proper.

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

222.(30) (1–18–80)

Section 2071. Concealment, Removal or Mutilation Generally

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

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

222.(31) (1–18–80)

Section 2231. Assault or Resistance

“(a) Whoever forcibly assaults, resists, opposes, prevents, impedes, intimidates, or interferes with any person authorized to serve or execute search warrants or to make searches and seizures while engaged in the performance of his duties with regard hereto or on account of the performance of such duties, shall be fined not more than $5,000 or imprisoned not more than three years, or both; and—
“(b) Whoever, in committing any act in violation of this section, uses any deadly or dangerous weapon, shall be fined not more than $10,000 or imprisoned not more than ten years, or both.” See IRM 9213.

222.(32)  
Section 2232. Destruction or Removal of Property to Prevent Seizure

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

222.(33)  
Section 2233. Rescue of Seized Property

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

222.(34)  
Section 641. Public Money, Property or Records

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

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

“Shall be fined not more than $10,000 or imprisoned not more than ten years, or both; but if the value of such property does not exceed the sum of $100, he shall be fined not more than $1,000 or imprisoned not more than one year, or both.”

230  
(Reserved)

240  
(Reserved)

241  
Periods of Limitation on Criminal Prosecution

IRC 6531. Periods of Limitation

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

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

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

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

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

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

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

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

“(8) for offenses arising under section 371 of Title 18 of the United States Code, where the object of the conspiracy is to attempt in any
man to evade or defeat any tax or the payment thereof.

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

**242** (1-18-80) 9781

IRC 6513. Time Return Deemed Filed and Tax Considered Paid

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

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

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

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

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

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

**243** (1-18-80) 9781

Title 18, United States Code—General Statute of Limitations—Section 3282. Offenses Not Capital

"Except as otherwise expressly provided by law, no person shall be prosecuted, tried, or punished for any offense, not capital, unless the indictment is found or the information is instituted within five years next after such offense shall have been committed. (June 25, 1948, ch. 645, Sec. 1, 62 Stat. 828 and September 1, 1954, ch. 1214, 2d. session, 68 Stat. 1142.)"
Title 18, United States Code—Fugitives From Justice

Section 3290. Fugitives From Justice

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

Section 1073. Flight to Avoid Prosecution or Giving Testimony

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

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

Civil Penalties Applicable to Fraud and Miscellaneous Investigations

Introduction

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

Internal Revenue Code of 1954, As Amended By Tax Reform Act of 1969

IRC 6651. Failure to File Tax Return or to Pay Tax

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

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

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

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

"(b) Penalty Imposed on Net Amount Due.—For purposes of—"
"(1) subsection (a)(1), the amount of tax required to be shown on the return shall be reduced by the amount of any part of the tax which is paid on or before the date prescribed for payment of the tax and by the amount of any credit against the tax which may be claimed on the return.

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

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

"(c) Limitations and Special Rule.—

"(1) Additions under more than one paragraph.—

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

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

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

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

252.3 (1-18-80) IRC 6653. Failure to Pay Tax

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

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

"(c) Definition of Underpayment.—For purposes of this section, the term 'underpayment' means—

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

(A) The sum of—

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

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

(B) The amount of rebates made.

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

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

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

252.4 (1-18-80) 9781
IRC 6211. Definition of a Deficiency

(a) In General.—For purposes of this title in the case of income, estate, gift, and excise taxes, imposed by subtitles A and B, and chapter 42, the term ‘deficiency’ means the amount by which the tax imposed by subtitle A or B or chapter 42 exceeds the excess of—

(1) the sum of

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

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

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

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

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

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

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

252.5 (1-18-80) 9781
Other Civil Penalties

See Exhibit 200-2 for a listing of other civil penalties.
## Exhibit 200-1

### Other Criminal Penalties

Handbook Reference: 221.(11)

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

#### Handbook Reference: 252.5

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<th>Section</th>
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<th>Penalty</th>
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<td>6656</td>
<td>Failure to make deposit of taxes.</td>
<td>5% of the amount of the underpayment.</td>
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<td>6657</td>
<td>Bad checks tendered not in good faith</td>
<td>1% of amount of check; Minimum: $5 or amount of check.</td>
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<td>6672</td>
<td>Failure to collect and pay over tax, or attempt to evade or defeat a collected tax.</td>
<td>Total amount of tax evaded, not collected, or not accounted for and paid over: $50.</td>
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<tr>
<td>6674</td>
<td>Wilfully furnishing fraudulent withholding statement or failing to furnish statement to employee.</td>
<td>Equal to double the excessive amount claimed.</td>
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<td>6675</td>
<td>Making an excessive claim with respect to the use of gasoline or lubricating oil.</td>
<td>$5 for each failure.</td>
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<tr>
<td>6676</td>
<td>Failure to supply identifying numbers on returns, statements, or documents, or to other persons, as required.</td>
<td>5% of the amount transferred, not to exceed $1,000.</td>
</tr>
<tr>
<td>6677(a)</td>
<td>Failure to file a return required under Section 6048, 1 R.C. (transfers to foreign trusts) or failure to report information required on such return.</td>
<td>$10, each failure.</td>
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<tr>
<td>6678</td>
<td>Failure to furnish statements to recipients of certain items of income (dividends, interest, certain wage payments, etc.).</td>
<td>$1,000.</td>
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<tr>
<td>6679</td>
<td>Failure to file a required return, or to show required information, relating to organization of, or acquisition of stock of, a foreign corporation.</td>
<td>$50. ($500, after 12/31/81)</td>
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<tr>
<td>6682</td>
<td>Supplying false information with respect to itemized deductions for withholding tax allowance purposes.</td>
<td>$50.</td>
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<td>7265(b)</td>
<td>Oleomargarine or adulterated butter—purchasing when not properly branded or stamped.</td>
<td>$500, or not less than double the amount of taxes fraudulently attempted to be evaded.</td>
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<tr>
<td>7268</td>
<td>Possession of goods on which taxes are imposed with intent by possessor to sell in fraud of law or to evade tax.</td>
<td>Not exceeding $500. $50.</td>
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<td>7269</td>
<td>Failure to produce records or property relating to estate tax.</td>
<td>$50.</td>
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<td>7271</td>
<td>Penalties relating to stamps—failure to attach or cancel, making, selling, issuing articles or documents without payment of full amount of tax, etc.</td>
<td>Equal to special tax but not less than $10.</td>
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<tr>
<td>7272</td>
<td>Failure to register.</td>
<td>Double above penalty.</td>
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<tr>
<td>7273</td>
<td>Failure to post stamps (not including wagering tax stamp). Not willful.</td>
<td>$500, or triple amount of drawback claimed.</td>
</tr>
<tr>
<td>7304</td>
<td>Willful</td>
<td>$2,000 forfeiture for each claim plus double the amount paid out by the United States.</td>
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<tr>
<td>31USC231</td>
<td>Liability of persons making false claims</td>
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</table>
Criminal Investigation Programs

General

(1) General Enforcement Program
(a) This program encompasses all criminal enforcement activities of the Criminal Investigation Division except those included in the special enforcement program. The identification and investigation of income tax evasion cases of substance with prosecution potential is a primary objective. The program also provides for balanced coverage as to types of violations, as well as geographic locations and economic and vocational status of violators as considered necessary to stimulate voluntary compliance. (IRM 9152)
(b) The highest priority of the Criminal Investigation Division is to create maximum positive impact on the compliance attitudes and practices of taxpayers through an effective General Enforcement Program (GEP). Within the GEP Program, priority will be given to high impact coordinated compliance projects. (IRM 9161.1)

(2) Special Enforcement Program
(a) This program encompasses the identification and investigation of that segment of the public who derive substantial income from illegal activities and violate the tax laws or other related statutes in contravention of the Internal Revenue laws. The very nature of their operations requires national coordination of enforcement efforts, close cooperation and liaison with the Department of Justice and other Federal, State and local law enforcement agencies. (See IRM 9400 and IRM 9153).
(b) Criminal Investigation, through the Special Enforcement Program, will continue to participate actively in the Federal effort against persons who derive substantial income from illegal activities and violate the tax laws. (IRM 9161.2)

Definitions (IRM 9390)

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

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

(3) A “case file” is the accumulated notes, documentation and information assembled as a result of Service inquiries of and about a taxpayer which contains the taxpayer’s name or identifying number or symbol assigned to the taxpayer.

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

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

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

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

Planning (Generally)

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

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

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

(4) Investigations should be terminated when sufficient evidence to convict has been accumulated and there are no reasonable grounds to expect that further investigation may
produce significant results in relation to the available evidence and to the additional investigative time and effort involved. The special agent will seek out all who are implicated in the crime and obtain definitive evidence as to their implication, to the extent reasonable. Investigations with less prosecution potential should be closed when there are insufficient resources in the foreseeable future for completing them and there are others of greater potential for development as substantial or flagrant criminal violations or having a greater deterrent potential.

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

321 (5-9-80)
References

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

322 (1-18-80)
Law

322.1 (1-18-80)
Definitions of Law

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

(2) Common and Statutory Law

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

(b) Statutory law refers to laws enacted and established by a legislative body. All Federal crimes are statutory but common law is frequently resorted to for defining words used in the statutes. For example, statutes provide penalties for attempted evasion of income tax but they do not define the terms "attempt" and "evasion."

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

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

322.2 (1-18-80)
Definitions of Crimes

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

"Notwithstanding any Act of Congress to the contrary:

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

(2) Any other offense is a misdemeanor.

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

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

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

(2) An aider and abettor may be convicted even if the person who commits the offense has not been indicted, tried or convicted. [Gray v. U.S.; Beauchamp v. U.S.] One who causes a criminal act may be convicted even if the performer of the act is acquitted. [U.S. v. Lester] Acquittal of one mistakenly charged with commission of a crime does not affect the guilt of one proved to have aided and abetted, so long as it is established that the crime was committed by someone. [Von Patzoll v. U.S.; Legatos v. U.S.]
(3) To aid and abet, a defendant must associate himself with a venture, whether or not there is a conspiracy, and try to make it succeed. Thus, in United States v. Johnson, where the crime of attempted tax evasion by the main defendant was based on alleged concealment of his interest in, and income from, gambling clubs, his co-defendants were held to be guilty because they consciously were parties to the concealment by pretending to be proprietors even if they did not actually share in the making of false returns. A defendant charged with aiding and abetting in bribery need not have been present when the bribe was paid. [Daniels v. U.S.]

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

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

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

323 (1-18-80)
Evidence (General Rules)

323.1 (1-18-80)
Definition of Evidence

Evidence is all the means by which any alleged matter or fact, the truth of which is submitted to investigation, is established or disproved. Investigators obtain evidentiary facts which by inference tend to prove or disprove the ultimate, main, or principal fact. The latter is a matter for determination by a court or jury. For example, a special agent obtains, in connection with a net worth case, documents and oral statements showing that a taxpayer's bank balance has increased substantially. That is an evidentiary fact from which an inference may be drawn relative to the ultimate or principal fact, namely, that the taxpayer willfully attempted to evade income tax. Legal evidence is such as is admissible in court under the rules of evidence because it tends reasonably and substantially to prove a fact. Evidence is distinguished from proof in that the latter is the result or effect of evidence.

323.2 (1-18-80)
Classifications of Evidence

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

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

(a) In addition to proving intent, a subject covered in greater detail in text 41(11.2) on will-
fulness, circumstantial evidence is also frequently used to prove unreported income as shown by increases in net worth, expenditures, or bank deposits.

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

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

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

(4) Evidence also may be classified as oral, documentary, and real—Evidence may be presented orally through witnesses, or by the introduction of records or other physical objects. Oral testimony consists of statements made by living witnesses under oath or affirmation. Documentary evidence consists of writings such as judicial and official records, contracts, deeds, and less formal writings such as letters, memoranda, and books and records of private persons and organizations. Maps, diagrams, and photographs are classed as documentary evidence. Real or physical, sometimes called demonstrative evidence, relates to tangible objects or property which are admitted in court or inspected by a trier of facts. More detailed information regarding oral testimony and documentary evidence is presented in text 737 and 350, respectively.

323.3 Relevant, and Competency

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

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

(3) The word "irrelevant" usually refers more particularly to the statement sought to be elicited. Although incompetency may relate to documents, in many cases it may go to the person of the witness in that he/she may be under some disability which prevents him/her from testifying in the particular case. For example, a person is not competent to testify if he/she does not understand the nature of an oath or is unable to narrate with understanding the facts he/she has seen.
(4) As applied to evidence such as documents, evidence is competent if it was obtained in a manner, in a form, and from a source proper under the law. Examples of incompetent evidence are a confession involuntarily obtained or an unsigned carbon copy of a document which is offered without any explanation for the failure to produce the original.

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

(6) A special agent should obtain and report all facts which logically relate to the subject of his/her investigation. He/she should not omit evidence because of doubt as to its relevancy. Likewise, the special agent should not omit evidence of doubt as to its materiality or competency.

323.4  (1-18-80) Judicial Notice

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

(2) A matter of judicial notice may be said to have three material requisites:
   (a) It must be a matter of common and general knowledge (or capable of accurate and ready demonstration). [App. of Knapp-Monarch Co.]
   (b) It must be well-settled and not uncertain; and
   (c) It must be known to be within the limits of the jurisdiction of the court. [20Am. Jurisprudence, Evidence, p. 81, sec. 59.]

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

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

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

323.5  (1-18-80) Presumptions

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

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

(3) A rebuttable presumption is one which prevails until it is overcome by evidence to the contrary. Some rebuttable presumptions are:
(a) In criminal cases, a defendant is presumed to be innocent until he/she is proved guilty beyond a reasonable doubt.

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

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

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

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

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

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

(h) Every person is presumed to be sane.

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

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

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

323.6 (1-18-80)

**Burden of Proof**

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

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

"The burden of proof is not upon the defendant to prove that he/she did believe that the way in which he/she computed and returned his/her income was correct, but the burden is upon the Government to prove beyond a reasonable doubt that the defendant intended to commit a crime and intended willfully to defraud the Government. If you have a reasonable doubt arising from the evidence as to whether or not in computing and returning his/her income for the years involved here the defendant acted in good faith according to the best of his/her knowledge and understanding, even though his method of computation might have been entirely wrong, it is your duty to find him not guilty."
(2) Proof beyond a reasonable doubt of every element of the crime charged is necessary for a conviction. In charging a jury as to the meaning of reasonable doubt, the judge in U.S. v. Sunderland stated:

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

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

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

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

(b) Where, under IRC 6501(e), the Commissioner makes an assessment after the three-year limitation period, but within six years after the return is filed, because of omission of more than 25 percent of the amount of gross income shown in the return, the burden of proving the required omission is on him/her. [Reis v. Comm.] This is in line with the general rule that one relying on an exception to the statute of limitations must prove the exception. [Wood v. Comm.]

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

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

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

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

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

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

"A mere preponderance of the evidence, meaning merely the greater weight of the evidence, is not sufficient to prove fraud. This does not mean that you must be convinced of fraud beyond a reasonable doubt, because this is not a criminal case. However, an allegation of fraud does require a greater degree of proof than is required in most civil cases, and a mere preponderance of the evidence, while enough to
Incline the mind of an impartial juror to one side of the issue rather than the other, is not enough to prove fraud. Fraud must be established by evidence which is clear, cogent and convincing.

323.7 (1-18-80) Hearsay (Federal Rules of Evidence Article VIII)

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

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

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

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

"(2) Admission by party-opponent. The statement is offered against a party and is (A) his own statement, in either his individual or a representative capacity, or (B) a statement of which he has manifested his adoption or belief in its truth, or (C) a statement by a person authorized by him to make a statement concerning the subject, or (D) a statement by his agent or servant concerning a matter within the scope of his agency or employment, made during the existence of the relationship, or (E) a statement by a coconspirator of a party during the course and in furtherance of the conspiracy."

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

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

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

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

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

(a) (Rule 803(1)) "Present sense impression.—A statement describing or explaining an event or condition made while the declarant was perceiving the event or condition or immediately thereafter."
(b) (Rule 803(2)) "Excited utterance.—A statement relating to a startling event or condition made while the declarant was under the stress of excitement caused by the event or condition." This exception refers to spontaneous declarations and acts committed during the event. The trustworthiness of such statements lies in their spontaneity, for the occurrence must be startling enough to produce a spontaneous and unreflective utterance without time to contrive or misrepresent. Once the excitement passes, statements made are not within this exception. They may be made by participants or bystanders, and a person who made or heard such statements may testify about them in court. The trial judge has wide discretion in deciding the admissibility of unsworn statements. The circumstances involved in a raid on a bookmaking establishment may be used to illustrate the application of this rule. One of the persons in the establishment, upon seeing the raiding officers enter the room says: "Burn the betting slips!" Even though the speaker is never identified and is not available as a witness, an agent who heard the statement may be permitted to testify about it in a trial of John Doe, to prove that betting slips existed.

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

(d) (Rule 803(4)) "Statements for purposes of medical diagnosis or treatment.—Statements made for purposes of medical diagnosis or treatment and describing medical history, or past or present symptoms, pain, or sensations, or the inception or general character of the cause or external source thereof, insofar as reasonably pertinent to diagnosis or treatment." This section does not change the law of privilege (HB 244.6).

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

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

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


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

(i) (Rule 803(21)) “Reputation as to character.—Reputation of a person’s character among his associates or in the community.”

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

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

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

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

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

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

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

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

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

“(4) is unable to be present or to testify at the hearing because of death or then existing physical or mental illness or infirmity; or
“(5) is absent from the hearing and the proponent of his statement has been unable to procure his attendance (or in the case of a hearsay exception under subdivision (b)(2), (3), or (4), his attendance or testimony) by process or other reasonable means. “A declarant is not unavailable as a witness if his exception, refusal, claim of lack of memory, inability, or absence is due to the procurement or wrongdoing of the proponent of his statement for the purpose of preventing the witness from attending or testifying.”

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

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

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

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

“(4) Statement of personal or family history.—(A) A statement concerning the declarant’s own birth, adoption, marriage, divorce, legitimacy, relationship by blood, adoption, or marriage, ancestry, or other similar fact of personal or family history, even though declarant had no means of acquiring personal knowledge of the matter stated; or (B) a statement concerning the foregoing matters, and death also, of another person, if the declarant was related to the other by blood, adoption, or marriage or was so intimately associated with the other’s family as to be likely to have accurate information concerning the matter declared.”

“(5) Other exceptions. “[These are the same as those specified in Rule 803(24) (HB 223.7(7)).]
especially true with respect to taxpayers engaged in illegal activities.

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

**Protection of Informants**

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

(2) In the Courts

(a) It is the duty of every citizen to communicate to his/her Government any information which he/she has of an offense against its laws. To encourage him/her in performing his/her duty, the courts have held such information to be confidential within the discretion of the Government. The courts, on the basis of public policy, will not compel or allow disclosure of an informant's identity without the consent of the Government unless such information is useful evidence to vindicate the accused or lessen the risk of false testimony, or is essential to the proper disposition of the case. [Rugendorf v. U.S.; Roviaro v. U.S.] Since the privilege exists in behalf of the Government and not the informant, the Government may waive it, and it is deemed to be waived if the informant is put on the witness stand. [U.S. v. Schneiderman; Segurola v. U.S.] Further discussion of the law regarding privileged communications of informants is contained in 344.

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

1. The court may, if he/she thinks that no harm is done the defendant, uphold the special agent;
2. The court may dismiss the action;
3. The special agent's superiors may release him/her from his/her obligation; or
4. If he/she persists in his/her refusal to answer, the court may find him/her in contempt.

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

**Techniques With Informants**

(1) Be fair and truthful with informants. Make no promises that you do not intend to fulfill. Show appreciation for the information furnished but do not let an informant determine the procedure to be used in the investigation or otherwise control it. A Government officer must not condone any violation of law in order to obtain information. Informants may, through ignorance or zeal, induce a violation. If a defendant can show that the informant who induced him/her to commit a violation was acting under some arrangement with Government officers, he/she has a legal defense. Therefore, whenever there appears to be a possibility of entrapment or some other unlawful act by an informant, he should be guided in a manner that will prevent the occurrence of such acts.
(2) Some informants supply only what information they think the officer does not know. The receiver, therefore, should in all instances make every effort to get all facts within the knowledge of the informant. If a telephone call is received from an anonymous source, the receiver should strive to elicit all possible information before the connection is broken because the caller may not offer any further opportunity for communication.

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

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

332.25 (1–18–80)
Payments to Informants

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

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

333 (1–18–80)
Information From Government Offices in Washington, D.C.

333.1 (1–18–80)
General

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

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

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

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

(d) the Securities and Exchange Commission;

(e) National Office of the Internal Revenue Service;

(f) Federal Deposit Insurance Corporation; and

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

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

(3) See IRM 9264.2.

333.2 (9–8–80)
Social Security Administration Records

(1) Regulations under the Social Security Act authorize the Social Security Administration to disclose information to any officer or employee of the Department of the Treasury lawfully charged with the administration of Titles II, VIII, or IX of the Social Security Act, the Federal Insurance Contributions Act, the Self-Employment Act, or the Federal Unemployment Tax Act, or any Federal income tax law, for the purpose of such administration only. The regul-
lations expressly forbid further disclosure of information thus obtained, or its use for any purpose other than administration of the employment and income tax laws.

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

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

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

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

(d) Requests for itemization of quarterly earnings, which identify employers and amounts of wages taxable under the Federal Insurance Contributions Act, may also be made to the Social Security Administration when such information is needed in the administration of employment and income tax laws. Requests of this type shall be made by memorandum stating that the information is to be used in an official investigation of an employment or income tax matter and identifying the period or periods for which an itemization of quarterly earnings is requested. In addition, the memorandum should show the taxpayer’s name and complete Social Security Number, and the name, address, and code of the IRS district originating the request. So that SSA can give priority to IRS criminal cases “IRS-CRITICAL CASE” should be labeled before the body of the memorandum in such instances and should be mailed directly to the Social Security Administration, Division of Adjustment Operations, Receipt and Dispatch Unit, 4-N-7 South Block, Metro West Building, 300 North Greene Street, Baltimore, Maryland 21201. The symbols “Attn: 14:WR:AR” shown on Form 2264 should not be used on memorandum requests. The memorandum should be signed by the Chief, Criminal Investigation Division, of his/her delegate, after the words “For the District Director” in similar signature format to Form 2264. Exhibit 300-20 is an example of a memorandum format which meets the needs of the Social Security Administration for IRS Criminal Cases. If the request to the Social Security Administration should involve a racketeer or any person being investigated under the Special Enforcement Program, extreme care should be exercised not to divulge such information. The Social Security Administration will submit the information on its Form OAR 1009, accompanied by an electronically prepared form giving the names and addresses of the taxpayer’s employers for the specified period.
(e) The Social Security Administration will endeavor to process Forms 2264 and requests for itemization of quarterly earnings as expeditiously as possible. Follow-up inquiries should not be made within sixty days from the date of the original request. If, after sixty days, it is found that a follow-up inquiry is necessary, a second request should be prepared in original only and forwarded to the Social Security Administration. However, the second request should not be identified as a follow-up or as a second request, and no reference should be made to the original request.

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

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

2 Justification for special handling of the requests.

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

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

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

333.3 (1-19-60)
Department of Labor Records


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

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

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

(5) Copies of reports filed under the Labor-Management Reporting and Disclosure Act ((1)-(3) above) may be inspected at the National Office of the Department of Labor, Office of Labor-Management Welfare Pension Reports, Washington, D.C., or at its area offices covering the geographical localities where the persons or organizations filing the reports have their principal places of business. Copies of reports filed under the Welfare and Pension Disclosure Act ((4) above) are available for inspection only at its National Office.
333.4 (3-12-81) State Department Records

(1) Import and Export Licenses
(2) Foreign Information
(3) Passport Records

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

333.5 (1-18-80) Securities and Exchange Commission Records

(1) SEC publications
   (a) Investment Advisor and Broker-Dealer Directories contain current identifications of all investment advisors and broker-dealers registered with the Commission. The identifications include the name and principal mailing address of each of these persons and/or entities; the type of organization it is, where appropriate; and their effective registration date with the Commission. There is also an application or background file available for each of these.

   (b) SEC Daily News Digests contain daily summaries of civil, criminal and administrative actions initiated by the Commission’s Division of Enforcement in addition to other items of interest to the securities industry. The SEC Weekly Docket is a weekly summary of items that appeared in the daily Digests.

   (c) The Quarterly SEC Securities Violations Bulletin lists all enforcement actions completed by the Commission for the preceding quarter. These include identification of all civil, criminal and administrative proceedings such as suspension and/or revocation of registrations, cease and desist orders, indictments, convictions, and imposition of sentences.

   (d) The documents referred to in (1)(b), (c) and (d) are distributed by the National Office to all regional offices of IRS. Copies are also available at any of the SEC regional or branch offices in the following cities: Atlanta, GA; Miami, FL; Boston, MA; Chicago, IL; Cleveland, OH; Detroit, MI; St. Louis, MO; Denver, CO; Salt Lake City, UT; Fort Worth, TX; Los Angeles, CA;

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

(2) Corporate Filings
   (a) Form 10-Q. Quarterly corporate financial report.
   (b) Form 10-K. Annual corporate financial report.
   (c) Form 8-K. Monthly corporate report made upon the occurrence of various key events such as: changes in control of registrant; change in registrant’s certifying accountant; and other materially important events.
   (d) Form 8. Form used to amend other corporate filings.
   (e) Form 13(d). Filed by stockholders who hold 5 percent or more interest. It should identify acquisition, show where money came from and how ownership interest changed.

(3) Enforcement/Investigative files
   (a) Corporate documents
   (b) Documents from third-party sources
   (c) Witness statements
   (d) Other appropriate investigatory material

(4) Access to SEC’s enforcement files can only be gained through a disclosure grant being conferred on IRS by the Commission (SEC). Request for access to these files must be addressed to the Director, Criminal Investigation Division, National Office, Attn: Chief, Operations Branch as indicated in 333.1:(1).

333.6 (1-18-80) Interstate Commerce Commission Records

(1) Section 20(7)(f) of the Interstate Commerce Commission Act prohibits the divulgence of any facts or information which may come to the knowledge of the Commission agent during the course of his official examination or inspection, except by direction of the Commission or by a court or judge thereof. If, however, it is necessary in connection with the examination of the taxpayer’s books and records for a special agent to have access to information or review the files of the Commission, a request for such information in the name of the Commissioner of Internal Revenue may be submitted to the Chairman of the Interstate Commerce Commission.
(2) Requests for information should be submitted by the District Director to the Director, Criminal Investigation Division, National Office, Attention: CP:CI:O. The information desired will be submitted through official channels and when obtained referred promptly to the District Director.

333.7 (1-18-80) Comptroller of Currency (Bank Examiners' Reports)

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

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

334 (1-18-80) Government Records

334.1 (1-18-80) Internal Revenue Service

334.11 (1-18-80) National Computer Center

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

334.111 (1-18-80) The Business Master File

(1) The Business Master File (BMF) maintained on magnetic tape is a tax record of business taxpayers required by law and regulations to have Employer Identification Numbers (EIN) as identifying account numbers.

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

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

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

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

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

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

334.112 (1-18-80) The Individual Master File

(1) The Individual Master File is a magnetic tape record of all individual income tax filers, in Social Security Number sequence, and is maintained at the National Computer Center. All tax
data and related information pertaining to individual income taxpayers are posted to the Individual Master File so that the file reflects a continuously updated and current record of each taxpayer’s account. All settlements with taxpayers are effected through computer processing of the Individual Master File account and the data therein is used for accounting records, for issuance of refund checks, bills or notices, answering inquiries, classifying returns for audit, preparing reports and other matters concerned with the processing and enforcement activities of the Internal Revenue Service.

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

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

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

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

334.113 (1–18–80) Residual Master File (RMF)

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

(a) Special Taxes (Return Form 11, 11B, 11C)
(b) Wagering Tax (Return Form 730)
(c) Highway Use Taxes (Return Form 2290)
(d) Estate Tax (Return Form 706)
(e) Gift Taxes (Return Form 709)

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

334.114 (1–18–80) Retention Register

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

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

334.115 (1–18–80) Transcripts of Account

334.1151 (1–18–80) Definitions

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

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

334.116 (1–18–80) Requesting Transcripts of Account

See text 3(10)6 for requesting transcripts.

334.12 (3–12–82) Service Center Records

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

(a) IMF and BMF name directories (ALPHA tapes). These directories list the names of the taxpayers in alphabetical order, their SSN or EIN, addresses and, in the case of the IMF directory, the SSN of the spouses. These directories are a quick way to determine the SSN or EIN of a taxpayer.
(b) IMF and BMF reference registers. These registers list the filings of tax returns for many periods, the classes of tax involved and the cycle each return was processed by the service center. The listings are in numerical order by SSN or EIN, as the case may be. These registers are important because they furnish the necessary information concerning the cycles during which returns were processed. This is needed in order to research the IMF and BMF accounts registers.

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

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

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

(3) See also IRM 9311.8.

334.2 (1-18-80) Disbursing Offices of the U.S. Government Records

(1) U.S. Government checks are issued by disbursing offices of the following services and departments:
(a) U.S. Army.
(b) U.S. Air Force.
(c) U.S. Navy.
(d) U.S. Marine Corps.
(e) U.S. Post Office Department.
(f) U.S. Treasury Department.

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

334.3 (3-12-81) Treasurer of the United States Records

334.31 (3-12-81) Introduction

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

334.32 (3-12-81) Refund Checks

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

(a) Name of payee (if the name of the payee is not available, the check may be located by
using the payee's Social Security Number or Employer Identification Number);

(b) Social Security Number or Employer Identification Number;

(c) Period and type of tax; and

(d) Amount of check.

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

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

334.33 (3-12-81) 9781
U.S. Treasury Checks Issued for U.S. Government Agencies

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

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

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

(a) Name of payee;
(b) Date of check;
(c) Amount of check;
(d) Check number;
(e) Disbursing office symbol;
(f) Photocopy is needed (if certification is necessary include this in the request);

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

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

(4) When the Check Claims Division receives the Form 1180 from the disbursing office, Part C of this form will be sent to the claimant. This should be the special agent (see (3)(g) above). Exhibit 300-1 is an example of a completed Form 1180.

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

Bureau of Government Financial Operations
Check Claims Division
401 14th Street S.W., Washington, DC 20227
ATTN: Stop Payment Branch

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

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

334.34 (3-12-81) 9781
Obtaining Original U.S. Treasury Checks

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

(2) Obtain the following information:

(a) Name of payee;
(b) Date of check;
(c) Amount of check;
(d) Check number; and
(e) Disbursing office symbol.

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

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

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

(6) The original check(s) will be forwarded to the requesting agent through the appropriate Secret Service field office or Resident Agency.
(7) When the original check is no longer needed, it will be returned to the appropriate Secret Service field office or Resident Agency.

334.4 (1–10–80) 9781
Bureau of the Public Debt
Records

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

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

(a) Request for information must be in the name of the District Director and addressed to:
Bureau of the Public Debt
Division of Transactions and Rulings
200 Third Street
Parkersburg, WV 26101

(b) The request should contain the following information:

1 the complete name that would be shown first on the bonds, including middle name or initial;
2 all addresses, including street and number, city and state which may be shown on the inscription on the bonds and the years the taxpayer lived at each address;
3 the taxpayer's social security account number, if the request is for information about Series H bonds, or Series E bonds issued on January 1, 1974, and later;
4 the years in which the bonds may have been issued as the issue record constitutes the basic reference. Ordinarily the redemption record can be identified only after the issuance is ascertained; and
5 the series of bonds which may have been purchased. The following schedule shows the dates when the sale of each series began and ended:

<table>
<thead>
<tr>
<th>Series</th>
<th>Dates</th>
</tr>
</thead>
<tbody>
<tr>
<td>A</td>
<td>March 1935 through December 1935.</td>
</tr>
<tr>
<td>B</td>
<td>January 1936 through December 1936.</td>
</tr>
<tr>
<td>C</td>
<td>January 1937 through December 1938.</td>
</tr>
<tr>
<td>D</td>
<td>January 1939 through April 1941.</td>
</tr>
<tr>
<td>E</td>
<td>May 1941 through present, sales continuing.</td>
</tr>
<tr>
<td>F</td>
<td>May 1941 through April 1952.</td>
</tr>
<tr>
<td>G</td>
<td>May 1941 through April 1952.</td>
</tr>
<tr>
<td>H</td>
<td>June 1952 through present, sales continuing.</td>
</tr>
<tr>
<td>J</td>
<td>May 1952 through April 1957.</td>
</tr>
<tr>
<td>K</td>
<td>May 1952 through April 1957.</td>
</tr>
</tbody>
</table>

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

(c) See IRM 937(14) concerning interest earned on savings bonds.
**334.5 (1-18-80)**

**Bureau of Government Financial Operations**

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

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

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

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

**Bureau of Government Financial Operations**

DCS/BEPA
Room 126
Treasury Annex #1
Washington, D.C. 20226

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

(a) taxpayer’s name and full address;
(b) amount of the redemption;
(c) approximate date the currency was presented for redemption; and
(d) name of the bank where the currency was presented for redemption.

(6) See also IRM 9376.1.

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

**Customs Service**

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

**Customs Records**

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

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

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

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

(1) In order to protect the identity of informants, it is the policy of the Customs Service to advise such persons that award payments should be reported on income tax returns as "other income", and that, if the source of that income is questioned by the Internal Revenue Service, the informant need state only that the
amount involved was received from the Customs Service for services of a confidential nature and give the name of the Customs officer from whom the award was received.

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

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

334.7 (1-18-80)
Secret Service Records

(1) Records pertaining to counterfeit and forgery cases.

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

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

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

(1) Practically every major case perfected by Bureau of Alcohol, Tobacco and Firearms (BATF) investigators involves individuals who, due to the nature of their illicit enterprises, either have not filed income tax returns or have filed false ones. The evidence in many of these cases not only establishes the violation of the laws which BATF is charged to enforce, but frequently makes out a prima facie income tax fraud case or at least furnishes some very definite leads to violation of the income tax laws.

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

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

(4) BATF records which may be of interest are as follows:
   (a) Records of distillers, brewers, and persons or firms who manufacture or handle alcohol as a sideline or main product.
   (b) Record of inventory of retail liquor dealers and names of suppliers as well as amounts of liquor purchased by brand.
   (c) Names and records of known bootleggers.
   (d) Reports of investigations.
   (e) Records of firearms registration (alphabetical and numerical).

(5) See also IRM 9378.

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

(1) Criminal records and fingerprints.

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

(3) Nonrestricted information pertaining to criminal offenses.

(4) National Fraudulent Check Index.

(5) Anonymous Letter Index.

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

(1) Record of licensed handlers of narcotics.

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

334.(11) (1-13-80)
Immigration and Naturalization Service Records

(1) Records of all immigrants and aliens.
(2) Lists of passengers and crews on vessels from foreign ports.

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

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

(5) Deportation proceedings.

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

334.(12) 1 2-7-81

U.S. Postal Service Records

Addresses of Post Office Box Holders

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

334.(12)2 12-7-81

Forwarding Addresses of Taxpayers and Third Parties

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

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

334.(12)3 12-7-81

Photostats of Postal Money Orders

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

334.(12)4 12-7-81

Mail Covers

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

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

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

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

(c) "Crime," for purposes of these regulations, is any commission of an act or the attempted commission of any act that is punishable by law by imprisonment for a term exceeding one year.
(d) "Law enforcement agent," is any authority of the Federal Government or any authority of a State or local Government one of whose functions is to investigate the commission or attempted commission of acts constituting a crime.

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

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

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

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

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

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

(b) that an official investigation is in progress;

(c) the Federal statute alleged to have been violated and the criminal penalty, if convicted. Requesters should provide a brief explanation of the statute and the criminal penalty which could be asserted if convicted under that statute. For example, "We are conducting an investigation of Mr. for allegedly attempting to evade his and his wife's personal income tax for calendar years 19 through 19 in violation of Section 7201 of the Internal Revenue Code. Conviction under this statute could result in Mr. being imprisoned for not more than five years and/or fined not more than $10,000 for each of the years for which he is convicted";

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

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

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

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

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

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

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 procedures 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)
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, together 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.
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 printouts 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.

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:CI:O.

Federal Housing Administration Records

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

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.

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.

Federal Courts Records

(1) Records of civil and criminal cases.
(2) Records of parole and probation officers.
(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.

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.

Federal Reserve Bank Records

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

Railroad Retirement Board Records

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

(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 System's (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 registration. 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 192A). The 192A file is a manual index of private aircraft (U.S. and foreign registered) arriving in the United States from foreign countries. The 192A 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 192A 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. 192A information is valuable in establishing conspiracies, showing travel patterns and associates, and identifying aircraft ownership. The 192A files are available at EPIC for the current year and the preceding two years. EPIC also has access to an additional two years of 192A information through INS. INS at EPIC can provide certified photocopies of the 192A's and an appropriate witness for evidentiary purposes. The Form 192A 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.
(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) 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) Securities Information Center Records

The Securities Information Center (SIC) is located in Wellesley Hills, Massachusetts. It is operated by Itel 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) 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) Treasury Enforcement Communications System (TECS)

335.1 (9-4-81) General

The Treasury Enforcement Communications System (TECS) is a computerized information system designed to identify individuals and businesses involved or suspected of involvement in violation of Federal law. It is also an enforcement communications system permitting instantaneous message transmission 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) Information Available from TECS

335.21 (9-4-81) 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

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(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) **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) 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, 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.

**335.23 (9-4-81) 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) 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 (RO) 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 (RO) after the state code indicates that only registration checks are automated, e.g., Alaska (AK)

   c. The Bureau of Alcohol, Tobacco and Firearms (ATF), Customs Form 335.22.

   d. IRS-Inspection (see text 335.21).

   e. IRS-Criminal Investigation Division (see text 335.21).

   f. Certain nonresident delinquent taxpayers (see IRM 937(16).2).

   g. 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.

   h. 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.

   i. 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 (RO) 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 (RO) after the state code indicates that only registration checks are automated, e.g., Alaska (AK)
The following states (including Alaska (AK) (RO)) are automated:

- Alabama (AL)
- Arizona (AZ) (RO)
- Arkansas (AR)
- California (CA)
- Colorado (CO)
- Connecticut (CT)
- Delaware (DE)
- District of Columbia (DC)
- Georgia (GA)
- Hawaii (HI)
- Idaho (ID) (RO)
- Illinois (IL)
- Indiana (IN)
- Iowa (IA)
- Kansas (KS)
- Kentucky (KY)
- Louisiana (LA)
- Maine (ME)
- Maryland (MD)
- Massachusetts (MA)
- Michigan (MI)
- Minnesota (MN)
- Mississippi (MS)
- Missouri (MO)
- Montana (MT)
- Nebraska (NE)
- Nevada (NV)
- New Hampshire (NH)
- New Jersey (NJ)
- New Mexico (NM)
- New York (NY)
- North Carolina (NC)
- North Dakota (ND)
- Ohio (OH)
- Oklahoma (OK)
- Oregon (OR)
- Pennsylvania (PA)
- Rhode Island (RI)
- South Carolina (SC)
- South Dakota (SD)
- Tennessee (TN)
- Texas (TX)
- Utah (UT)
- Vermont (VT)
- Virginia (VA)
- Washington (WA)
- 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) 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 can be queried to determine whether 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) 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) 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:

- Name and case number;
- Alias;
- Race;
- Sex;
- Height;
- Weight;
- Color of hair;
- Color of eyes;
- Description of any identifying scars, marks and tattoos;
- Date of birth;
- Place of birth;
- Social Security Number;
- Passport number;
- Last known address;
- Nationality;
- 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)).

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335.7 (9-4-81) 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 (4-15-62) 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)  
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)  
Records and Information from U.S. Possessions and From Foreign Countries

337.1  (5–9–80)  
Office Of International Operations

The office of International Operations has the responsibility to make inquiries in foreign countries. 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)  
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)  
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 personnel 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)
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:CI: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) 9781
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) 9781
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.
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 information 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) Business Records
338.1 (1-18-80) Banks
338.11 (1-18-80) 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) 93781

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.
Signature Cards

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.
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

c) The banks using an ADP system printout 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)
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)
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)
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)
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)
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)  
**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)  
**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)  
**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)  
**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)

**Deposits**

(1) Deposits may be classified as to their basic sources which are:
   - Receiving Teller
   - Mail or Special Messenger
   - Telegraphic Transfers
   - Other Bank Departments
   - Night and Lobby Depositories

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

(3) Time deposits
   - Savings account which may be subject to a 30-day notice of withdrawal.
   - 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.
   - 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(16) (1-18-80)

**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 photographed began and what was photographed. The questions apply to both past and present practices.

338.1(17) (11-10-81)

**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)

**Currency Transaction Reports, Form 4789**

338.21 (9-4-81)

**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)

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)

Securities

338.31 (1-18-80)

Stocks

338.311 (1-18-80)

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)

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) 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) 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) 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 fractional 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) 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.
### Stock Exchanges

**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.

**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.

**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:
   - bank stocks
   - insurance company stocks
   - U.S. Government securities
   - municipal bonds
   - open-end investment company shares
   - mutual funds
   - most corporate bonds
   - stocks of a very large number of industrial and utility corporations, including nearly all new issues
   - 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.

**Transfer Agent**

(1) The principal documents available from the transfer agent are:
   - stockholder ledger card
   - 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:
   - stockholder identification
   - stockholder position
   - stock certificate numbers
   - number of shares represented by certificates
   - dates certificates were issued or surrendered
Handbook for Special Agents

(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)  
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.
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.

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.
(2) Files of laundry marks.
   (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
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.

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.

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.

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.

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.

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.

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.

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 summons for CNA insurance Companies should be directed to and personally served to:  
1 Director, Corporate Security  
2 Controllers Department  
3 CNA Insurance  
4 CNA Plaza—34th Floor  
5 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 summons and make necessary inquiries for information requested from CNA.  

338.(18)9 (11-10-81)  
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. Summons 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)  
Newspaper Records  

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

338.(20) (1-18-80)  
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)  
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.

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. 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 Intercontinental 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.(33) (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)  
Notification to U.S. Secret Service  
(IRM 9378)

339.11 (1-18-80)  
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 of 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)  
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)  
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)  
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) Witnesses and Prospective Defendants

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

341.1 (1-18-80) 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 subpoenas, 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) 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."

MT 9781-30
Legality and Use of Certain Evidence and Equipment

341.31 (1-18-80)  
Admissibility of Evidence


(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. Scocinick]

(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)  
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)  
Electronic Listening Devices and Other Monitoring Devices

341.331 (2-8-82)  
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)  
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)  
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)  
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 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 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 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
Recoding 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) 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. Vandenberg] 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) Duty to Inform Individual of His Constitutional Rights

342.131 (1-18-80) 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) 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. Hefner]
(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), typewriter 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 wishes to consult with 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-
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. Lipsitch; 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]
**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. 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 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 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) 9781
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)
Corporations

342.31 (1-18-80)
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 inanimate 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)
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 way 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)
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 inIRM 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) Third Party Witnesses

343.1 (1-18-80) 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) 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) 9781
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 USCS 3491. Also, 28 USCS 1783 provides a Federal court with sub-
poena powers to compel the appearance before it, or before a person or body designated by it, of a United States citizen or resident physically present in a foreign country.

(2) The following methods may be used to have foreign records authenticated for use in any ensuing criminal proceeding in the United States Courts:

(a) Stipulation—It may be possible to get the defendant in any subsequent litigation to stipulate the authenticity of the records in question.

(b) Voluntary Testimony—It may be possible to have the appropriate witness or official voluntarily appear and testify as to authenticity of the records in question.

(c) 18 U.S.C. § 3491, et seq.—These provisions provide a method by which certain foreign documents can be made admissible in a criminal proceeding in the United States. Under the procedures contemplated by these provisions the party wishing to have foreign documents authenticated (i.e., either the United States or the defendant) may, after appropriate notice to the opposite party, apply for the issuance of a commission to an appropriate consular officer. 18 U.S.C. § 3492. The consular official, acting pursuant to the commission, can then take the testimony of the authenticating witness in accordance with the provisions of 18 U.S.C. § 3493. If the consular officer taking the testimony is satisfied, upon all the testimony taken, that the foreign document in question is genuine, he shall certify such document to be genuine under the seal of his office in accordance with 18 U.S.C. § 3494. After the additional requirements of 18 U.S.C. § 3494 relative to the transmittal of the document to the court are satisfied, the document shall be admissible in evidence in any criminal action or proceeding in any court of the United States if the court shall find, from all the testimony taken with respect to such foreign document pursuant to a commission executed under § 3492 of this title that such document (or the original thereof if such document is a copy satisfies the requirements of § 1732 of Title 28 relating to records maintained in the regular course of business). It is possible that the witness or official will refuse to voluntarily testify. In that event, and providing there is a tax treaty between the foreign government involved and the United States, the foreign government should be requested to compel the witness or official to testify. The foreign agent conducting the interview would then be in a position to ask the necessary questions in the presence of the United States consul (U.S. v. Hav).

(d) Affidavit—In United States v. Leal, the court was faced with the question of whether certain documents originating in Hong Kong could be admitted into evidence in a criminal prosecution in the United States. The records in question consisted of the affidavit of the assistant manager of a Hong Kong hotel to which was attached an original hotel registration card and certain telephone booking orders of the defendant and his wife. In this proceeding the Government did not attempt to use the mechanism established by 18 U.S.C. § 3491, et seq. Rather, the court allowed the Government to rely solely upon 28 U.S.C. § 1732 (the Federal Business Records Act). Essentially, the procedure which the Government followed was that outlined in Fed. R. Crim. P. 44(a)(2) for authenticating foreign official records. Thus, the assistant manager for the hotel gave a sworn statement before the United States Vice Consul in Hong Kong explaining that he chose not to go to Guam to testify, describing the contents of the attached original hotel records, attesting that he was the official custodian thereof and that the documents had been prepared or witnessed by himself or by persons under his authority and had constantly been in the hotel under his supervisory control, and stating that they constituted records prepared in the normal course of business of the hotel.

(e) Authentication By Testimony From Foreign Government Official—In the case of United States v. Quong, the court was faced with questions concerning the admissibility of records obtained from a foreign business. In that case a Canadian law enforcement officer picked up the books and records which had been assembled by an officer of a Canadian company. The officer then transmitted the documents to the United States and testified in the United States District Court as to their authenticity. The court held that the procedure followed was substantially in accordance with the Business Records Act (28 U.S.C. § 1732) and ruled that the records were admissible. The court noted that the officer had taken the records directly from the custodian and that the dates on the records corresponded with dates shown on other records whose admissibility was not in question. Taking this into account the court found that they were kept in the regular course of business and were, therefore, admissible.
343.6 (4-13-81)

Dual Representation

(1) Treasury Department Circular No. 230 (Rev. 6-79), which covers the practice of attorneys, certified public accountants, enrolled agents, and enrolled actuaries before the Internal Revenue Service, provides the following with respect to dual representation:

§ 10.29 Conflicting Interests

No attorney, certified public accountant, or enrolled agent shall represent conflicting interests in his practice before the Internal Revenue Service, except by express consent of all directly interested parties after full disclosure has been made.

(2) Dual representation exists when a summoned third-party witness is represented by an attorney, certified public accountant, enrolled agent, or other person who also represents the taxpayer or another interested party. It may also occur where an attorney under investigation represents a third-party witness in that investigation or where an attorney-witness seeks to represent another witness in the same investigation. An interested party is one who has a significant pecuniary interest in the testimony of the witness or who, by virtue of the nature of the investigation and the known facts, may be incriminated by the witness.

(3) Except as provided below, the mere existence of a dual representation situation which may potentially have an adverse impact on the investigation will not, without some action by the attorney to impede or obstruct the investigation, provide a sufficient basis for seeking a disqualification. However, where an attorney’s representation has substantially prejudiced the questioning of a third-party witness and, as a result, has significantly impaired the progress of the investigation, the Service will request the Department of Justice to seek a court order, as part of the summons enforcement proceeding, to disqualify that attorney as counsel for that witness.

(4) In view of the well-established principle granting a person the right to counsel of one’s choice, this disqualification procedure will only be used in extreme circumstances, such as where an attorney has taken some action to improperly or unlawfully impede or obstruct the investigation. It is essential that the interviewing officer have sufficient facts to support such allegations.

(5) The provisions referring to “attorneys” apply to other representatives (nonattorneys) who represent witnesses or taxpayers.

(6) Interview of Witness

(a) Upon learning that counsel represents both the taxpayer under investigation (or other interested party) as well as the summoned witness, the interviewing officer should give consideration to exploring with the attorney, prior to the interview of the witness whether or not the attorney realizes that his representation of both the subject of the investigation and the witness may occasion a conflict of interest.

(b) If, after discussing the potential conflict of interest situation with the attorney the question is not resolved, at the outset of the interview of the witness, the interviewing officer should ask the following of the witness:

1. Do you wish the attorney to be present during the questioning?
2. Did you hire the attorney for this purpose?
3. Are you paying for the attorney’s services, either alone or in conjunction with someone else—if the latter, do you know who?
4. Do you know that the attorney also represents the taxpayer?
5. Do you know that the attorney is being paid by the taxpayer (or some other person)?

(c) In those instances where the interviewing officer becomes aware of the potential conflict of interest during the interview, he/she should explore the issue by asking the questions listed. In some situations it may be appropriate for the interviewing officer to tell the witness that in his/her view, the interest of the taxpayer under investigation conflicts with that of the witness.

(d) After disclosure of the dual or multiple representation has been made, if the witness unequivocally states that he/she wishes the attorney in question to represent him/her and that he/she is utilizing the services of the attorney in this matter, then the interview should proceed.

(e) However, if the witness states that he/she does not wish to retain that attorney because of the possible conflict of interest, then the witness should be given the opportunity of either proceeding with the interview without an attorney present or adjourning the interview to a specific future date in order to afford the witness an opportunity to secure the services of another attorney. If the witness refuses to pro-
ceed to obtain the services of another attorney within a reasonable period of time, the witness should be notified that his/her failure to comply with the summons may result in a recommendation to the Department of Justice that a summons enforcement proceeding be initiated.

(7) Obstruction of Interview

(a) If the interviewing officer has reason to anticipate that an attorney will improperly impede or obstruct the questioning of a witness, he/she should consult with District Counsel prior to the interview with respect to the manner of conducting the questioning.

(b) Speculation that the objective of the investigation might be frustrated is insufficient grounds upon which to seek disqualification of an attorney. The fact that the attorney for the summoned witness also represents the taxpayer or other interested party does not provide a basis for concluding that the presence of such attorney would obstruct the investigation.

(c) Thus, the mere potential for obstruction is generally an insufficient basis to justify a recommendation for disqualification of an attorney. There must be active obstruction by an attorney before disqualification will be sought. A suit to disqualify an attorney for obstruction will be undertaken only where the facts clearly indicate that he/she has actively impeded the investigation.

(d) Unjustifiable obstruction by an attorney may take a variety of forms. It is, therefore, impossible to set forth the precise factual circumstances under which the Government would ask a court to disqualify an attorney as counsel for a third-party witness.

(e) The following is an example of a circumstance which may provide the basis for a recommendation for the institution of litigation to seek the disqualification of an attorney:

Taxpayer and third-party witness are both represented by the same attorney. The witness is summoned to testify. The attorney refuses to permit the witness to answer questions for other than legitimate reasons or disrupts the questioning by repeatedly making frivolous objections to the questions, or asserts frivolous claims of privilege or defenses on behalf of the witness to delay the investigation, or so disrupts the interview that the interviewing officer, with due diligence and perseverance, is unable to proceed with the interview. [Backer v. Commissioner]. This is not intended to suggest that there is anything inherently wrong in claiming the Fifth Amendment privilege.

A careful distinction must be drawn between situations in which the proper remedy is to compel the witness to answer and those in which the attorney may be disqualified because of this conduct. The latter is an extreme remedy which will only be sought in very unusual circumstances, as courts are reluctant to deprive a person of his/her choice of attorney. District Counsel, therefore, will make a considered determination on a case-by-case basis prior to seeking disqualification of an attorney.

(8) Suspension of Interview

(a) If the interview is suspended because of the attorney's actions, the witness should be given the opportunity to secure the services of another attorney within a reasonable period of time or proceed without an attorney. If the witness declines either to proceed without an attorney or retain a new one within a reasonable period of time, the witness should be informed that a summons enforcement proceeding and an action to disqualify the attorney will be recommended.

(b) Upon suspension of an interview, the interviewing officer will consult with his/her manager. If the manager is in accord with the interviewing officer's view that the facts present an appropriate case for litigation, a request will be made to District Counsel that they recommend to the Department of Justice that it seek judicial enforcement of the summons and exclusion of the attorney from representing the witness.

(c) Suspension of an interview should be made judiciously in view of the time delays in the investigation that may be caused by such action.

(d) A record should be made of the circumstances in each instance where an interview is suspended because of dual representation and/or obstruction by an attorney. The interviewing officer should also have a verbatim transcript of the interview (if possible) so that the factual allegations concerning the attorney's conduct at the interview may be proven.

(9) Procedures where an attorney will be excluded prior to interviewing witness are:
(a) Where an individual taxpayer under investigation attempts to appear with a summoned witness as the witness' attorney, the witness should be told that the taxpayer/attorney is the person under investigation and that he/she will not be allowed to be present during the questioning. The witness should be given the opportunity of either proceeding with the interview without the taxpayer present or adjourning the interview to secure the services of another attorney. If the witness insists upon retaining the same attorney despite the assertion of a conflict of interest, the interviewing officer will terminate the interview and a request will be made to District Counsel for judicial enforcement of the summons and exclusion of the attorney.

(b) A witness may appear pursuant to a summons accompanied by an attorney who also represents the taxpayer (or other interested party) where the taxpayer (or other interested party) has already made exculpatory statements to the Service alleging that the witness was criminally responsible for circumstances to be discussed during the interview. In this case, the witness will be told that the attorney also represents the taxpayer (or other interested party) and that the agent believes that an irreconcilable conflict of interest exists which could prejudice the investigation. The witness should then be given the opportunity of either proceeding with the interview without the attorney present or adjourning the interview to secure the services of another attorney. If the witness insists upon retaining the same attorney despite the assertion of a conflict of interest, the interviewing officer will terminate the interview and a request will be made to District Counsel for judicial enforcement of the summons and exclusion of the attorney.

(c) Where a witness appears pursuant to a summons and is accompanied by a person (other than the taxpayer) who does not represent the individual witness, such person may be excluded from the interview. An example of a situation in which a person may be excluded from the interview is where a corporate official (witness) is summoned in his/her individual capacity regarding an examination of the corporation and an attorney representing the corporation, who does not also represent the witness, attempts to attend the interview. However, if the witness refuses to be interviewed if that person is excluded and the person is a designee of the taxpayer within the meaning of IRC 6103(c) and its regulations, the interview will proceed unless the interviewing officer makes a determination that continuation of the interview will impede development of the case. If such a determination is made, the interview will be terminated and a request will be made to District Counsel for a recommendation for judicial enforcement of the summons by the Department of Justice and exclusion of the person from any future interviews pursuant to the court's order.
Privileged Communications

344.1 (1–18–80) Conditions for Privileged Communications

(1) There are certain special types of relationships in which information communicated by one person to the other is held confidential and privileged between them. The one to whom the information has been imparted cannot be compelled to divulge it without the consent of the other. There are four fundamental conditions: [Sec. 244—8 Wigmore (3d Ed.) 2285]

(a) The communications must originate in a confidence that they will not be disclosed;
(b) The element of confidentiality must be essential to the full and satisfactory maintenance of the relation between the parties;
(c) The relation must be one which in the opinion of the community ought to be diligently fostered;
(d) The injury that would inure to the relationship by the disclosure of the communications must be greater than the benefit thereby gained for the correct disposal of litigation.

344.2 (1–18–80) Attorney and Client Privilege

(1) The attorney-client privilege must be strictly construed. Mere attorney-client relationship does not make every communication by the client to his/her attorney confidential. The communication must have been made to the attorney in his/her capacity as such, employed to give legal advice, represent the client in litigation, or perform some other function strictly as an attorney. When it does apply, the privilege covers corporate as well as individual clients. Basically, attorney-client privilege does not include a right to withhold the name of a client. [Colton v. U.S.] However, an attorney’s refusal to furnish a client’s name has been upheld where it would indirectly amount to disclosure of communications of a confidential nature, as, where the attorney has delivered a check to the Internal Revenue Service in payment of a client’s tax but refuses to name the client. [Tillotson v. Boughner; Baird v. Koerner; Colton v. U.S.] Dates and amounts of legal fees paid by a client to his/her lawyer do not constitute a privileged communication. [In re Wasserman and Carliner.]

(2) If the attorney is a mere scrivener or a conduit for handling funds, or the transaction involves a simple transfer of title to real estate, without consultation for legal advice, communications from the client to the attorney are not privileged. [McFee v. U.S.; Pollock v. U.S.] Neither are communications privileged which have been made in the course of seeking business rather than legal advice. [U.S. v. Vehicular Parking, Ltd.] The privilege is ordinarily inapplicable to communications made to a person who acts as both attorney and accountant, if they have been made solely to enable him/her to audit the client’s books, prepare a Federal income tax return, or otherwise act purely as an accountant. [Olender v. U.S.] However, some courts have held that a privileged communication can occur between a client and attorney in the process of preparing a tax return. [Colton v. U.S.; U.S. v. Kovel] A person who consults an attorney for help or advice in perpetrating a future crime of fraudulent act is not consulting the attorney for the legitimate purposes intended to be protected, and communications by the client or intended client in connection with such consultation are not privileged. [Genevieve A. Clark v. U.S.; Pollock v. U.S.]

(3) A communication by a client to an attorney in the presence of a third person is no longer privileged, unless the third person’s presence is indispensable to the communication, e.g., the attorney’s secretary. [Himmelfarb v. U.S.] Likewise, a client’s communication loses its privilege when the attorney relates it to a third person unless that person’s services are necessary to furnishing the legal advice. Thus, the records of a bank from which an attorney has bought a cashier’s check for an undisclosed client for delivery to the Internal Revenue Service are not covered by the attorney-client privilege, even if the attorney may withhold the client’s name. The bank in such case is a third party whose services are not indispensable to communications between client and attorney, and not part of any giving of legal advice. [Schulze v. Rayunc] On the same theory, a bank to which an attorney sends a client to work out an estate plan is not essential to communications by the client to the attorney, and information that the client gives the bank is not privileged. Similarly, communications by the client to the attorney are not privileged if the client obviously intended them to be divulged to third persons. [U.S. v. Thomas G. McDonald; U.S. v. Tellier; Banks v. U.S.] This includes the contents of closing statements and sales contracts prepared by the attorney, which the client necessarily expected to divulge to other parties at the closing. [U.S. v. McDonald] or information
Courts which deny the claim of attorney-client privilege point out that every taxpayer is required to keep records for examination by the Commissioner (26 USC 54). Likewise, communications between an attorney and a third party not essential to the furnishing of legal advice would not be privileged. [Schulze v. Rayneec]

(4) Courts disagree as to an attorney's right to refuse production of a taxpayer-client's records in his/her possession, basing their determination upon whether or not the client could have withheld the records. [U.S. v. Judson] Courts which deny the claim of attorney-client privilege point out that every taxpayer is required to keep records for examination by the Commissioner (26 USC 54), [Falsone v. U.S.; U.S. v. Willis] or that persons who engage in the business of wagering are required to keep daily records showing gross amounts of wagers (26 USC 3287). [U.S. v. Willis] Courts holding the contrary view say that where a taxpayer has already refused to give information on the ground of possible self-incrimination or could have done so, his/her attorney cannot be compelled to produce the taxpayer's records, or workpapers made from them by the taxpayer's accountant at the attorney's request in connection with a pending tax investigation. [U.S. v. Judson; In re Fahey.]

344.3 (2-8-82) Accountant and Client Privilege

(1) There is no privilege between an accountant and a client under common law or Federal law. [Falsone v. U.S.; Lustman v. Commr; U.S. v. Bowman] The accountant's workpapers belong to the accountant, are not privileged, and must be produced. [Deck v. U.S.; Bouschor v. U.S.] A taxpayer may be required by summons to produce an accountant's workpapers in his/her possession. A Fifth Amendment claim is not appropriate since the privilege protects a person only against being incriminated by his/her own compelled testimonial communications, and the accountant's workpapers are not the taxpayer's nor do they contain the taxpayer's testimonial declarations. [Fisher v. U.S.] Neither may an attorney refuse to produce workpapers prepared by the taxpayer's accountant (other than at the attorney's request in connection with a pending investigation).

344.4 (5-9-80) Husband and Wife Privilege

(1) Communications between husband and wife, privately made, are generally assumed to have been intended to be of a confidential nature, and are therefore held to be privileged. It is essential, however, that the communications must be, from their nature, fairly intended to be of a confidential nature. If it is obvious from the circumstances or nature of a communication that no confidence was intended, there is no privilege. [Wolfle v. U.S.; U.S. v. Mitchell; Blau v. U.S.] For example, communications between husband and wife voluntarily made in the presence of their children old enough to understand them, or other members of the family within the intimacy of the family circle, are not privileged. [Wolfle v. U.S.] Likewise, communications made in the presence of a third party are usually regarded as not privileged, and this has been held to be so even though the third party was a stenographer for one of the spouses, where the stenographer was not a person essential to the communication. [Wolfle v. U.S.]

(2) Privilege is not extended to communications made outside the marriage relations, as, before marriage, [U.S. v. Mitchell] or after divorce. [Yoder v. U.S.] Further, the privilege applies only to communications, and not to acts. The mere doing of an act by one spouse in the presence of the other is held not to be a communication. [8 Wigmore (3d Ed.) Sec. 2337] For example, in the Mitchell case where a husband induced his wife to participate in a violation of Federal law and took the proceeds from her, it was held that the taking of money was an act, not a communication, and therefore not privileged. It has been held in an income tax case where the taxpayer's wife voluntarily turned over his business records to a revenue agent without his consent, that the records were not a communication between husband and wife, and not confidential between them. [U.S. v. Ashby] It has also been stated that the privilege should not apply to situations where the wife is employed in her husband's business office, and she would learn only what any other secretary would learn. [U.S. v. Nelson E. Jones]
(3) Communications remain privileged after termination of the marriage by death of one spouse. [8 Wigmore (3d Ed.) 2341] Likewise, the privilege as to communications made during marriage does not terminate by divorce. [8 Wigmore (3d Ed.) 2341; Pereira v. U.S.]

(4) In addition to the privilege of a husband or wife to prevent the other from disclosing confidential communications that occurred during the marriage, there exists an independent privilege of one spouse to refuse to testify adversely against his/her spouse. With respect to this privilege, the testifying spouse alone has the choice of whether or not to refuse to testify adversely against his/her spouse on any act he/she observed before or during the marriage and on any non-confidential communications [U.S. v. Trammel]. The spouse may not be compelled to testify nor foreclosed from testifying.

344.5 (1-18-80) Clergyman and Penitent Privilege

Privilege between clergyman and penitent has been recognized in the Federal courts. [Mullen v. U.S.; Totten v. U.S.] This privilege has not been extended to financial matters, such as contributions made through a clergyman.

344.6 (1-18-80) Physician and Patient Privilege

As a general rule Federal Courts do not recognize any privilege between physician and patient.

344.7 (1-18-80) Psychotherapist-Patient Privilege

(1) Federal Rule of Evidence 504 specifically provides for a psychotherapist-patient privilege.

(2) Ordinarily a special agent will not need information from a psychotherapist regarding the mental condition of his/her patient. However, such information may be necessary if a taxpayer raises a defense based on his/her mental condition. If a request is made and if the psychotherapist resists, or is expected to resist furnishing the information, the special agent should obtain a waiver of privilege from the taxpayer. The waiver should protect the psychotherapist from any future claim that the privilege was violated. A copy of the waiver should be retained in the case file. A suggested form of waiver is shown in Exhibit 300-18.

344.8 (1-18-80) Informant and Government Privilege

(1) This privilege allows enforcement agencies to withhold from disclosure the identity of persons who furnish information of violations of law to officers charged with enforcement of that law. The purpose of the privilege is the furtherance and protection of the public interest in effective law enforcement. The privilege recognizes the obligation of citizens to communicate their knowledge of the commission of crimes to law enforcement officials and, by preserving their anonymity, encourages them to perform that obligation. [Roviaro v. U.S.] The contents of a communication are not privileged unless they tend to reveal the informant's identity. [Roviaro v. U.S.]

(2) This privilege differs from all the others in that it is waivable only by the Government whereas the others are for the benefit of, and waivable by, the individual. Where disclosure of an informer's identity or the content of the communication is relevant and helpful to the defense of an accused or is essential to a fair determination, the trial court may order disclosure. [Rugendorf v. U.S.; Roviaro v. U.S.; Scher v. U.S.] If the Government then withholds the information, the court may dismiss the indictment. [Roviaro v. U.S.]

(3) Generally, if it is shown that the informant participated in the act which is the basis for a criminal prosecution the court will require disclosure of his/her identity. For example, where the informant has been used to buy narcotics or counterfeit money from the defendant, the courts have held that nondisclosure was improper. [Roviaro v. U.S.; Conforti v. U.S.; Portomeme v. U.S.] On the other hand, where there is sufficient evidence to establish probable cause independent of the information received from the informant, the Government's claim of privilege has been sustained. As an example, in the Scher case, where the defendant's automobile has been searched without a warrant, partly on the basis of an informant's information that bootleg alcohol was being transported, and partly because of the searching officers' own observation that the automobile with its lights out, was being loaded with packages, the court upheld the privilege. [305 U.S. 251] Further discussion relating to protection of informants is contained in 332.23.