



MANUAL TRANSMITTAL

Department of the Treasury
Internal Revenue Service

4.11.52

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EFFECTIVE DATE

(08-21-2025)

PURPOSE

- (1) This transmits revised IRM 4.11.52, Transferee Liability Cases.

MATERIAL CHANGES

- (1) Editorial changes have been made throughout this IRM. Website addresses, legal references, and IRM references were reviewed and updated as necessary.

EFFECT ON OTHER DOCUMENTS

This material supersedes IRM 4.11.52, dated December 16, 2021.

AUDIENCE

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4.11.52

Transferee Liability Cases

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4.11.52.1
(05-13-2019)
**Program Scope and
Objectives**

- (1) **Purpose.** This IRM section is an introduction and outline of review and processing procedures with transferee cases; including statute of limitations.
- (2) **Audience.** These procedures apply to all Small Business/Self-Employed (SB/SE) examiners and Large Business & International (LB&I) examiners.
- (3) **Policy Owner.** The Director, Examination Field and Campus Policy, which is under the Director, Headquarters Examination.
- (4) **Program Owner.** Field Examination Special Processes, which is under the Director, Examination Field and Campus Policy.
- (5) **Primary Stakeholders.** SB/SE is the primary stakeholder of the examination Transferee Liability Program.
- (6) **Contact Information.** To recommend changes or make any other suggestions related to this IRM section, see IRM 1.11.6.5, Providing Feedback About an IRM Section - Outside of Clearance.

4.11.52.1.1
(05-13-2019)
Background

- (1) This IRM serves as a quick reference guide for procedures on examinations. It acts as an index, providing a guide to actions needed for a given examination activity, and refers the reader to supporting references. This section provides guidance for examiners working cases with potential transferee assessment issues.
- (2) As part of an examiner's pre-contact responsibilities under IRM 4.10.2.4.1, Collectibility, consideration must be given to the taxpayer's financial status (collectibility). Examiners must identify if it appears taxpayers have intentionally or inadvertently placed assets out of the legal reach of the government through asset transfers not conducted at arm's length. This issue is known as transferee liability under IRC 6901, Transferred assets.
- (3) "Transferee liability" is a tool used by the IRS to collect a taxpayer-transferor's tax liability. A transferee case is developed to collect the liability from the person/entity who received the taxpayer-transferor's assets for less than full, fair and adequate consideration or to collect the liability from the person/entity who is legally responsible for paying the taxpayer-transferor's liability. This person/entity is the "transferee". The person/entity whose tax liability the government is seeking to collect is the "transferor".

Example: During the initial interview the examiner is told the corporate taxpayer dissolved during the preceding year. The examiner must follow-up with questions concerning the disposition of the corporate assets to determine if a transferee assessment situation exists. The examiner must initiate a transferee liability case if the transferor corporation has an unpaid tax liability and the transferee criteria have been met. See the Burden of Proof discussion in IRM 4.11.52.4.

Example: A distribution by a corporation upon its dissolution to a shareholder based on the shareholder's equity interest in a corporation, such as a dividend, or a payment by the corporation of a debt owed to a shareholder can be a preferential transfer to an insider, thus, resulting in transferee liability.

Example: If a stockholder is also an officer or an employee of the corporation, and receives a bonus or salary which is unreasonable, the stockholder may

be treated as a transferee on the theory that the excessive salary is the equivalent of a distribution of corporate assets.

Example: Transferee liability may arise in a stock sale context, where the sale is in economic substance a “sham”.

Example: The purchase of the stock of a corporation, followed by the subsequent liquidation of the corporation, may render the purchaser liable as a transferee.

- (4) Transferee cases are also identified during the collection process. Revenue officers refer potential transferee cases to Examination personnel via Form 3031, Report of Investigation of Transferee Liability. The referrals will be assigned by Planning and Special Programs (PSP) as detailed in IRM 4.1.1.6.11.2, Collection Referrals-Form 3031, Report of Investigation of Transferee Liability, and IRM 4.10.13.3.1.1, Referral From Collection Function.
- (5) Income, Estate, Gift and certain other taxes can be collected through a transferee liability case. “Other taxes” are defined as any other tax (employment, excise, withholding), but only if such liability arises as the result of a liquidation of a corporation, partnership or a reorganization within the meaning of IRC 368(a), Reorganization.

4.11.52.1.2
(05-13-2019)

Authority

- (1) Authority - IRC 6901 governs transferee assessments.

4.11.52.1.3
(05-13-2019)

Roles and Responsibilities

- (1) The Director, Headquarters Examination, is the executive responsible for providing policy and guidance for Field employees and ensuring consistent application of policy, procedures, and tax law to effect tax administration while protecting taxpayers' rights.
- (2) The Director, Examination Field and Campus Policy, reports to the Director, Headquarters Examination, and is responsible for the delivery of policy and guidance that impacts the Field Examination process. See IRM 1.1.16.5.5.1, Examination Field and Campus Policy, for additional information.
- (3) Field Examination Special Processes, who reports to the Director, Examination - Field and Campus Policy, is the group responsible for providing oversight and policy and procedural guidance on specialized examination processes to SB/SE Field examiners and managers. See IRM 1.1.16.5.5.1.2, Field Examination Special Processes.

4.11.52.1.4
(08-21-2025)

Program Management and Review

- (1) Periodic program reviews are conducted by FESP to:
 - Assess the effectiveness of specific programs within Examination or across the organization,
 - Determine if procedures are followed,
 - Validate policies and procedures, and
 - Identify and share best/proven practices.

4.11.52.1.5
(12-16-2021)

(1) The following table lists commonly used acronyms and command codes with their definitions as used throughout this IRM.

Acronyms and Codes

Acronym/Code	Definition
AIMS	Audit Information Management System
ERCS	Exam Return Control System
FMV	Fair Market Value
MFT	Master File Tax
NMF	Non-Masterfile
SOL	Statute of Limitations
SSN	Social Security Number
TBOR	Taxpayer Bill of Rights
TIN	Taxpayer Identification Number
TXMOD	TIF Tax Module Display
UFCFA	Uniform Fraudulent Conveyance Act
UFTA	Uniform Fraudulent Transfer Act
USC	United States Code

4.11.52.1.6
(05-13-2019)

(1) The following table lists commonly used terms with their definitions as used throughout this IRM.

Terms

Terms	Definition
Insolvent	Generally, understood to mean an inability to pay debts as they become due.
Transferee	A transferee is the person(s) or entity(ies) who received the assets for less than full, fair and adequate consideration, and who is additionally liable for the tax due to this transfer. A transferee may be a corporation, an individual, an estate or an executor or administrator of an estate, or a fiduciary or a combination of these entities.
Transferor	A corporation, an individual, or an estate that created the tax liability and transferred assets, which could potentially satisfy the tax liability, to another party or multiple parties.
Transferee Liability	Is a situation where a third party can be held liable for the tax liability of another.

4.11.52.1.7
(12-16-2021)

- (1) The following table contains related resources which cover additional procedures that examiners may reference for Transferee Liability Cases.

Related Resources

Reference	Title
Form 3031	Report of Investigation of Transferee Liability
IRM 4.1.1.6.11.2	Collection Referrals-Form 3031, Report of Investigation of Transferee Liability
IRM 4.8.8.13	Transferee Liability Cases
IRM 4.8.9.19.5	Transferor-Transferee Liability and Fiduciary Liability Cases
IRM 4.10.13.3	Transferor-Transferee Liability
IRM 5.1.14.2	Transferee Liability and Fraudulent Conveyances
IRM 5.17.14.5	Methods of Collecting from a Transferee or Fiduciary
IRM 21.7.12	Non-Master File (NMF) Adjustments
IRM 25.6.1.9.7.2	Fiduciaries and Transferees
IRM 25.6.22.6.17.1	Transferee Liability
Tax Court Rules, Rule 142. Burden of Proof	Burden of Proof, (d) Transferee Liability
IRC 6501(c)	Exceptions
IRC 6901	Transferred assets
IRC 6902	Provisions of special application to transferees
Examination Knowledge Management	<i>Transferee Liability</i>
Transferee Liability Knowledge Management	<i>Analysis of Transferor's Liability Template</i>
Transferee Liability Knowledge Management	<i>Assets Transferred Template</i>
Transferee Liability Knowledge Management	<i>Example of a Transferee Report</i>

Caution: The following discussion concerning transferee liability cases is only meant to provide an overview, and to provide examiners with information which will enable them to recognize actual, or potential transferee assessment situations. As with other areas of tax law, transferee liability cases can be very complex in nature. This discussion cannot and will not replace independent research predicated upon the facts of the specific case. Examiners are encouraged to contact the Technical Services Transferee Liability Coordinator at: *Transferor/Transferee Coordinator by State*.

- (2) The IRS adopted the Taxpayer Bill of Rights (TBOR) in June 2014. Employees are responsible for being familiar with and acting in accordance with taxpayer rights. See IRC 7803(a)(3), Execution of duties in accord with taxpayer rights.

4.11.52.2
(05-13-2019)
Types of Transferee Liability

- (1) IRC 6901, Transferred assets, provides the IRS an administrative mechanism to assert that a transferee is liable for a transferor's primary liability. The transferee's substantive liability, however, is a matter of state law (state fraudulent transfer statutes) or federal law (28 USC 3301, Definitions, through 28 USC 3308, Supplementary Provision). There are two types of transferee liability, both of which can be asserted under IRC 6901. The two types of transferee liability are "transferee at law" and "transferee in equity". For a more complete discussion of the two sources of transferee liability, see IRM 5.17.14.3.3, Establishing Transferee Liability.

4.11.52.2.1
(11-01-2004)
Transferee At Law

- (1) Transferee at law arises when a person/entity is responsible for the transferor's tax liability because of a contractual agreement with the transferor. In this situation, a valid contract must exist and the government must prove that the tax liability was within the terms of the contract (for example, an assumption or guarantee agreement). Statutory mergers where the surviving corporation is primarily liable for the debts of the merged corporation do NOT result in a transferee situation. Consult the contracts and agreement affecting the merger and applicable state law.
- (2) Transferee at law may also arise under state statutes other than the fraudulent conveyance statutes. For example, statutes relating to corporate mergers and consolidations, bulk sales of assets, liability of officers, directors and shareholders of certain types of distributions and transactions may create a transferee at law. Similarly, transferee at law may arise under federal statute, such as the liability of representatives of persons/estates who pay other debts before paying federal tax debts (31 USC 3713(b), A representative of a person or an estate (except a trustee acting under title 11)).

4.11.52.2.2
(05-13-2019)
Transferee In Equity

- (1) Transferee in equity is the most common form of transferee liability. This situation arises when a person/entity receives the transferor's assets for less than full, fair and adequate consideration, leaving the transferor insolvent and unable to pay the tax liability.
- (2) Fraudulent transfers in equity are generally proven by showing either constructive fraud or actual fraud.
 - a. Proof of constructive fraud is sufficient to set aside a transfer that occurs after the debt arises. See 28 USC 3304(a), Debt Arising Before Transfer; Uniform Fraudulent Transfer Act (UFTA) Section 5; Uniform Fraudulent Conveyance Act (UFCA) Sections 4 and 5. Constructive fraud exists when property is transferred for inadequate consideration (or for less than the reasonably equivalent value) and the transferor either is insolvent when the transfer occurs or is made insolvent by the transfer (28 USC 3304(a), Debt Arising Before Transfer; UFTA Sections 4(a)(2) and 5; UFCA Sections 6 and 7). A transferor's intent is immaterial if constructive fraud is proven.
 - b. Proof of actual fraud will defeat a transfer whether the debt arises before or after the transfer (See 28 USC 3304(b), Transfers Without Regard to Date of Judgment; UFTA Section 4; UFCA Sections 6 and 7). Actual fraud occurs when property is transferred with the actual intent to hinder, delay, or defraud a creditor in the collection of a debt owed it (28 USC 3304(b), Transfers Without Regard to Date of Judgment; UFTA Section 4(a)(1)). It can be difficult to prove that a transfer was made with the actual intent to defraud a creditor. A fraudulent transfer usually is made

without any verbal or written expression of the reason for the transfer. Because of this, actual fraud is generally proved through circumstantial evidence known as the “indicators of fraud”, such as lack of adequate consideration or a transfer to insiders.

- (3) Transferee in equity cases are based on the state or federal fraudulent conveyance statutes. In these cases, the transferee liability is generally limited to the value of the assets received from the transferor.

Reminder: See IRM 5.17.14.3.3 for a more complete discussion.

4.11.52.3
(05-13-2019)

**Assessment Statute of
Limitations (SOL)**

- (1) Examiners must properly determine and establish control of the transferee’s statute of limitations (SOL) for transfer of liability purposes on Masterfile. A transferee assessment SOL is based upon the transferor’s SOL; therefore, an account transcript for the transferor must be obtained immediately. The SOL for the transferee is as follows:
- a. IRC 6901(c)(1), Initial transferee: One year after the expiration of the period of limitation for assessment against the transferor.
 - b. IRC 6901(c)(2), Transferee of transferee: One year after the expiration of the period of limitation for assessment against the preceding transferee, or three years after the expiration of the period of limitation for assessment against the transferor, whichever expires first; except that if, before the expiration of the period of limitation for the assessment of the liability of the transferee, a court proceeding for the collection of the tax or liability in respect thereof has begun against the initial transferor or the last preceding transferee, respectively, then the period of limitation for assessment of the liability of the transferee shall expire one year after the return of execution in the court proceeding.
 - c. IRC 6901(c)(3), Fiduciary: Not later than one year after the liability arises, or not later than the expiration of the period for collection of such tax, whichever is later.
- (2) In the case of a fraudulent return, tax may be assessed at any time. Thus, if fraud is established on the part of the transferor, an assessment may be made against the transferor at any time.
- (3) If the transferor’s tax may be assessed at any time because of fraud, the period of limitations against a transferee remains open indefinitely. The following legal references may hold the statute open:
- *Bartmer Auto. Self Ser. Laundry, Inc. v. Commissioner*, 35 T.C. 317 (1960) Court Opinion;
 - *Forehand v. Commissioner*, 66 T.C.M 1763, 1993-618, Court Opinion;
 - *Pert v. Commissioner*, 105 T.C. 370 (1995) Court Opinion;
 - IRC 6501(c), Exceptions.

- (4) IRC 6901(d)(1), Extension of Time for Assessment:

Caution: Do not allow the normal transferee four-year period of limitations to expire if possible. Instead, obtain a consent agreement from the transferee.

Note: See IRM 4.11.52.3.1 for more information. In the event the fraud issue is not sustained, the transferee statute will be open because a transferee consent was obtained and the IRS can still pursue the tax and alternative (to fraud) penalty liabilities against the transferee.

- (5) Complete Form 895, Notice of Statute Expiration, if the transferee assessment statute expiration date is within 210 days. Prepare a Form 895, for each transferee and for each tax period.
 - Check the box for “Other Irregular Assessment Period”.
 - In the remarks section, notate: “The statute was determined by IRC 6901(c), Period of limitations”, or “the statute was determined by IRC 6901(d), Extension by agreement”.
 - Annotate the transferee’s statute of limitation date and the number of years that were added to the transferor’s statute per IRC 6901(c) to compute the transferee’s statute of limitation.
 - Attach any concurrence by Area Counsel regarding the statute of limitations.
- (6) If the transferee statute of limitations is within six months of the statute expiration date, or if the transferee failed to file a valid protest to the 30-day letter, the transferee case will be forwarded to Technical Services for issuance of a Statutory Notice of Transferee Liability. See IRM 4.10.13.3.4.8, Closing a Transferee Case with less Than Six Months Remaining on the Transferee Statute of Limitations.

4.11.52.3.1
(05-13-2019)
**Consent to Extend the
Transferee’s SOL**

- (1) Cases must be completed within the normal transferee SOL to the extent possible. Consents to extend the transferee SOL must be secured only in limited circumstances.

Note: Approval of the consent agreement must be obtained from Area Counsel before the consent agreement is executed by the delegated official.

- (2) The following forms can be used to extend a transferee SOL:
 - a. Form 977, Consent to Extend the Time to Assess Liability at Law or in Equity for Income, Gift and Estate Tax Against a Transferee of Fiduciary.
 - b. Form 4016, Consent Fixing Period of Limitation Upon Assessment of Employment or Miscellaneous Excise Taxes Against a Transferee.

Caution: A consent signed by one transferee does not extend the period for assessment for another transferee or a succeeding transferee (a transferee of a transferee). See *Columbia Pictures Industries, Inc. v. Commissioner*, 55 T.C. 649 (1971), Court Opinion and General Counsel Memorandum (GCM) 34599.

- (3) Merger or consolidation, where the successor corporation is **primarily** liable for the debts of the merged corporation, does NOT result in a transferee situation. Therefore, a merger or consolidation does not provide the extra one year period on the SOL that applies in transferee situations. In situations involving a dissolved corporation, the corporate officer’s ability to represent the dissolved corporation (transferor) and execute consents/waivers on behalf of the dissolved corporation-transferor is dependent on the law of the state where the corporation was organized. Thus, the corporate officer may be unable to legally execute a consent agreement or waiver of the restriction on assessment, depending on the applicable state law. In these situations, Area Counsel must be consulted for advice and guidance.
- (4) Additional references for transferee liability statute of limitations procedures may be found in:

- a. IRM 25.6.1.9.7.2, Fiduciaries and Transferees,
- b. IRM 25.6.22.6.17.1, Transferee Liability,
- c. IRM 4.10.13.3.3, Statutory Period and Consents.

4.11.52.4
(05-13-2019)
Burden of Proof

- (1) The government has the burden of proving all elements necessary to establish a transferee liability per Tax Court Rules, Rule 142. Burden of Proof, (d) Transferee Liability. Documentation must be contained in the case file to support each requirement, since many transferee cases go to court. The government will not likely be sustained if the required documentation is not contained in the case file. The burden of proof is on the government to show that a transferee at law or a transferee in equity is liable as a recipient of property but not to show that the taxpayer was liable for the tax.
- (2) All transferee cases, whether at law or in equity, require documentation showing that the transferor transferred assets to the transferee. The documentation must detail the following:
 - a. The dates of transfer,
 - b. What assets were transferred,
 - c. The value of each individual asset, and
 - d. List any liabilities assumed by the transferee.
- (3) Refer to *Assets Transferred Template* for a sample worksheet for summarizing assets transferred.
- (4) See IRM 5.17.14.5.3, Burden of Proof Under IRC 6901, for more information.

4.11.52.4.1
(05-13-2019)
**Documentation Required
for Transferee at Law**

- (1) For transferee at law cases, the file must contain documentation showing that the transferee assumed the tax liability because of either a contractual agreement or a state or federal statute.
- (2) For transferee at law established by a contractual agreement, the examiner must show that a valid contract exists and that under the contract, the transferee assumed the transferor's tax liability. The case file must include a copy of the signed contract.
- (3) The case file must include a copy of the applicable state or federal statute on which the IRS is relying for transferee at law established by statute.
- (4) The case file must include a transcript of the transferor's account to establish that the transferor's tax liability was for a tax period ending prior to the transfer and remains unpaid. If the transfer of property to the transferee was made during the tax period under consideration, consult Area Counsel as to whether or not the tax liability of the transferor had accrued on the date of the transfer.
- (5) See IRM 5.17.14.3.3.1, Transferee Liability Directly Imposed on the Transferee (At Law), for more information.

4.11.52.4.2
(05-13-2019)
**Documentation Required
for Transferee in Equity**

- (1) First, the government must prove the transferor became insolvent when the asset transfer occurred, or was rendered insolvent because of a series of asset transfers. Documentation must show that the sum of the transferor's tax and other liabilities (for example, mortgages, debts payable) exceeded the transferor's assets at the time of the transfer. For example, a copy of the transferor's balance sheet at the time of insolvency, bankruptcy documents,

corporate dissolution documents, documents showing how the assets in a decedent's estate were distributed must be obtained and included in the case file.

Note: Transferee at equity liability is highly dependent on the state or federal law upon which the liability is based. In some states, depending on state law, insolvency may not be necessary for a transferee in equity proceeding. Consult Area Counsel if there are transferor-transferee situations when the transferor was not insolvent at the date of, or rendered insolvent by the transfer of property.

- (2) Second, the government must prove that the asset transfer was for less than adequate, or full consideration. Documentation must show:
- The asset was transferred (for example, deed, balance sheets, canceled check(s), title transfers).
 - The value of the asset transferred on the transfer date.
 - The consideration, if any, paid for the asset(s).
 - Who received the asset(s). The documentation must show the current legal title. A transferee is rarely a joint entity. In the case of a transfer made by a jointly held asset (For example, land titled as tenancy by the entireties), the joint owners are considered a single transferee.

Reminder: *Assets Transferred Template* may be used to summarize the above information.

- (3) Third, in some cases, but not all, the government must prove that the asset transfer was made after the liability for the taxes accrued. When required, documentation must be included to show the date the tax liability accrued and the date the transfer occurred. The tax accrues by the last day of the tax period, not on the due date of the return. There is no requirement that the tax liability has been assessed at the time of the asset transfer in order to proceed against the transferee.

Note: Different courts have reached various conclusions as to when the tax liability of the transferor accrues, so Area Counsel must be consulted when determining the date the liability of the transferor for the tax debt accrued.

- (4) Fourth, the government must show that the transferor was liable for the tax. Documentation must be included to show the tax liability. If the tax has been assessed, a transcript of the transferor's account must be included. If the liability is the result of an examination, a copy of the examination report or notice of deficiency must be included, although transferee assessments can be made without having issued an examination report or notice of deficiency to the transferor.
- (5) Fifth, the government must prove that a reasonable attempt was made to collect the tax liability from the transferor, or that it would be futile to pursue collection from the transferor such as in the case of a corporation which has dissolved and distributed its assets. Documentation must show the transferor is in bankruptcy, has dissolved, or has distributed all the assets and collection from the transferor is not possible or that collection activity was unsuccessful. A TXMOD will show the action taken by Collection.

Note: See IRM 5.17.14.3.3, Establishing Transferee Liability, and its subparts, for a more thorough explanation of what can show fraudulent transfers in equity.

Note: Identification of actual versus constructive fraud and the general factors that may be applicable can be found in IRM 5.17.14.3.3.2.2.1, Constructive Fraud, and IRM 5.17.14.3.3.2.2.2, Actual Fraud.

4.11.52.5
(05-13-2019)
**Administration
Procedures**

- (1) IRM 4.10.13.3.4, Administrative Procedures, contains additional information for Transferee-Transferor Liability cases.
- (2) Examiners must determine the transferee SOL, and document the case file. See IRM 4.11.52.3, for guidance on Statute of Limitations procedures.
- (3) If the transferee liability case is not already on Exam Return Control System (ERCS), the examiner must control each transferee on Non-Masterfile (NMF) Audit Inventory Management System (AIMS), using the Master File Tax (MFT) code and activity code of the transferor return. This must be separate from the regular tax examination for the transferee individual/entity. ERCS will not allow a Masterfile and a Non-Masterfile control for the same person/entity. In addition, AIMS will not allow a social security number (SSN) with a Business Master File (BMF) MFT code. Therefore, a dummy file must be established for the transferee case. It must use the transferee's taxpayer identification number (TIN) with a **-D** (dummy) and **Transferee** after the name to indicate transferee status. Using the **-D** eliminates the other dashes in the TIN, so both ERCS and AIMS will accept the number with the NMF / MFT of the transferor. The transferor's tax period, form number, MFT code, and activity code are used. Each transferee is controlled separately.

Example: Fish, John, Transferee, 000-00-0000-D, MFT 80, or

Example: ABC Company, Transferee, 00-1111111-D, MFT 80.

- (4) Then, the examiner will schedule an appointment to interview the transferor and to obtain documentation to support the burden of proof (see IRM 4.11.52.4). The transferee, as well as other individuals associated with the transfer, can also be contacted to obtain information necessary to support the burden of proof.

SAMPLE TRANSFEROR QUESTIONS

SAMPLE TRANSFEROR QUESTIONS
1. Transferor's financial history - when and how did the transferor become insolvent? When did they file bankruptcy? Was there a dissolution?
2. What are the most current financial statements prior to becoming insolvent? Ask for copies. If there are no financial statements, ask the transferor to reconstruct financial statements and attach any documentation he relied on.
3. What assets did you have prior to insolvency and how were they disposed of? What consideration was paid? Obtain copies of any sales agreements. What was the fair market value (FMV) at the time of the transfer? How was this FMV determined? Was there any debt associated with the asset?
4. List all bank accounts and brokerage accounts prior to insolvency. Did you take out any loans within 3 years of your insolvency? With whom?
5. When did you become aware of your income tax liability?

Corporate Transferor

Corporate Transferor
6. Prior to insolvency, did the corporation have any outstanding loans to shareholders? To whom? Were they repaid? When?
7. If the shareholders were also employees, what were their salaries and bonuses in the years before and after the unpaid tax accrued?
8. What dividends were paid to the shareholders in the years before and after the unpaid tax accrued?

Decedent - Interview the Personal Representative

Decedent - Interview the Personal Representative
9. Who is the personal representative? Obtain documentation.
10. Obtain a copy of the will.
11. Have the assets been distributed yet? To whom?
12. Did you have knowledge of the tax liability of the decedent?
13. Has the estate been closed?
14. Was the IRS notified of the transferor's death? Was a proof of claim filed by the IRS?
15. Did you file the decedent's final return?

Divorce - The examiner needs to determine if the divorce was fraudulent or was it a bona fide divorce.

Divorce - The examiner needs to determine if the divorce was fraudulent or was it a bona fide divorce.
16. What is the current address of the taxpayers?
17. When did the spouse receive the assets?
18. Who negotiated and drafted the divorce decree? Obtain a copy.
19. Were both spouses represented by Counsel? Did they know of the transfer of the assets?
20. Did the spouse receiving the assets have knowledge of the other spouse's unpaid tax liability?

SAMPLE TRANSFEEE QUESTIONS

SAMPLE TRANSFEEE QUESTIONS
GENERAL QUESTIONS
1. When did you become aware of (transferor's) unpaid tax liability?
2. Are you in any way related to (transferor)?

Questions for Transferee in Equity

Questions for Transferee in Equity
3. What assets did you receive from (transferor)?

Questions for Transferee in Equity

4. What consideration did you pay for the asset(s)? How was that consideration amount determined?
5. Whose name is the asset titled? Was title legally transferred?
6. Did you receive any intangible benefits (For example, priority status on contract bidding, cosponsorship of promotional events) as part of the compensation for the asset?
7. Are you aware of any other assets of (transferor) that were transferred to others? To whom? What was transferred and what was paid?
8. When did (transferor) become insolvent (liabilities exceeding assets) and/or when did (transferor) stop doing business?

Questions for Transferee at Law**Questions for Transferee at Law**

9. Was a fiduciary or personal representative involved in distributing the assets? Who? What was their capacity (personal representative, trustee, receiver in bankruptcy)? Ask for documentation appointing them to this position.
 10. Are there any contracts which you entered into in which you agreed to assume (transferor's) liability?
- Caution:** Rules regarding the disclosure of information apply to Transferee Liability cases despite the relationship between the Transferee and the Transferor taxpayers. The examiner must not disclose tax return information of the Transferor.

- (5) The examiner must solicit an agreement and payment from the transferee after all information/documentation is secured. If there is more than one transferee, the transferor's liability is not allocated between the transferees. Each transferee is assessed the full amount of the transferor's liability to the extent of the FMV of the assets received. The most common forms used include:
 - Form 870-T, Waiver of Restrictions on Assessment and Collection of Transferee or Fiduciary Liability and Acceptance of Overassessment (for income tax).
 - Form 2504, Agreement to Assessment and Collection of Additional Tax and Acceptance of Overassessment (Employment Tax Adjustments Not Subject to IRC 7436).
 - Form 2045, Transferee Agreement. See the Forms discussion later in this section at IRM 4.11.52.5.3.
 - Form 4318-A, Continuation Sheet for Form 4318, Examination Workpapers Index.
- (6) See IRM 4.10.13.3.4.4, Corporate Transferor - Information to Include in the Transferee Report, and IRM 4.10.13.3.4.5, Deceased Transferor - Information to Include in the Transferee Report, for additional information on report writing.
- (1) Forward all cases (agreed and unagreed) to Technical Services when the amount of tax of the transferor and the appropriate tax liability of the transferee has been determined (may not be the full amount of the tax due).

4.11.52.5.1
(05-13-2019)
Transferor Case File

Exception: If transferor signs a waiver for the entire deficiency and the examiner did not send a 30 day letter to the transferee(s), the transferor case will be forwarded to Centralized Case Processing for assessment of tax on the transferor, and the transferee case can be closed as a no-change or survey per closing procedures guidance.

- (2) Ideally, the transferor and the transferee cases will be closed together if the examiner has control of both cases. However, due to certain circumstances, including, statute considerations they may be separated.
- (3) Examiners will complete normal closing documents for the transferor case. Form 5344: The whipsaw indicator will be **K**.

4.11.52.5.2
(05-13-2019)
Transferee Case File

- (1) Each transferee is a separate entity. As such, each transferee must have a separate case file established. The transferee individual/entity will have the title "Transferee" after the transferee's name.
- (2) Transferee liability cases that originate in Collection must have a transferee report prepared on Form 3031, Report of Investigation of Transferee Liability. Transferee liability cases that originate in Examination must have a transferee report that includes the same information as Form 3031, but in memorandum format. See the forms discussion at IRM 4.11.52.5.3.2.
- (3) The case file documentation and workpapers must be attached to the transferee report. The workpapers must be properly numbered and indexed.
- (4) The transferor's original tax return(s) must be included for those tax periods for which a liability is unpaid.
- (5) The case file must include the following:
 - a. Letter 955, 30 Day Letter - Straight Deficiencies of Both Deficiencies and Overpayments, is issued at the group level, and modified as necessary.

Caution: Transferee liability is not a tax (In re W.J. Kardash, Sr., BC-DC Fla., 2017-2 USTC P 50,434; or IRS: 30,124 Transferee Liability for Taxes). Therefore, use of Letter 955 may not be appropriate. A modification of Letter 955 may be considered. Examiners may contact their local Technical Services Transferee Liability Coordinator for guidance.

- b. If the case is not protested to the Office of Appeals, the unagreed case file is forwarded to Technical Services, for preparation and issuance of the Notice of Liability.
- c. Form 3210, Document Transmittal must be noted Unagreed Transferee Case.
- d. If applicable, Form 4665, Report Transmittal must include a clear statement of the present ability of the transferor and each transferee to pay, with names, addresses, amounts, and nature of property held by each that may be used in payment of tax.
- e. Form 5344, Examination Closing Record. **Transferor:** The transferor whipsaw indicator will be "K". **Transferee:** Item 13 must have an examined disposal code. It cannot be Disposal Code 28 for NMF closings. Item 401 must reflect the whipsaw indicator "R".
- f. Form 3198, Special Handling Notice for Examination Case Processing, is prepared for all transferee cases. Where applicable, remark, "Transferee Case Agreed/Unagreed, route to Technical Services".

- (6) All transferee cases are closed to Technical Services for special handling. This applies to agreed cases, as well as, unagreed cases. Technical Services will complete the Form 1296, Assessment Against Transferee or Fiduciary. See IRM 4.10.13.3.4.7, Closing an Agreed Transferee Case.
- (7) Area Counsel reviews all notices of liability (90-day letters) per IRM 4.8.9.10.2.1, Mandatory Area Counsel Review.

4.11.52.5.3
(05-13-2019)
Forms

- (1) This section covers the various assessment forms that may be used during a transferee liability case.
 - a. Form 870-T, Waiver of Restrictions on Assessment and Collection of Transferee or Fiduciary Liability and Acceptance of Overassessment (for income tax),
 - b. Form 890, Waiver of Restriction on Assessments & Collection of Deficiency & Acceptance of Overassessments - Estate, Gift, and Generation-Skipping Transfer Tax, and
 - c. Form 2504, Agreement to Assessment and Collection of Additional Tax and Acceptance of Overassessments (Employment Tax Adjustments Not Subject to IRC 7436).
- (2) Add the following wording to Form 870-T, Form 890, or Form 2504:
 - a. If the assets transferred exceed the transferor's total liability - "This represents the undersigned's liability as transferee of the assets of (name and address of the transferor) for (type of tax), penalties, and interest thereon as provided by law due from said transferor."
 - b. If the transferor's total liability exceeds the assets transferred - "This, plus interest thereon, represents the undersigned's liability as a transferee of the assets of (name and address of the transferor) for (type of tax), penalties and interest thereon, to the extent of the net value of the assets received from the transferor, plus interest thereon as provided by law. It has been determined that the net value of the assets received is (value of the assets received)."

4.11.52.5.3.1
(11-01-2004)
Form 2045, Transferee Agreement

- (1) This form is used if the transferor is a corporation. By signing this form, the transferee admits liability as transferee of the assets received from the transferor, assumes and agrees to pay the tax liability of the transferor. Thus, by signing this form, the transferee has relieved the government of the burden of proving transferee liability.
- (2) This form provides the transferee with the opportunity to agree to the status as a transferee only. To obligate the transferee to a specific amount of tax liability use either Form 870-T, or Form 890, or Form 2504.
- (3) To protect the government's interest, the examiner must solicit Form 2045 from each transferee receiving property from a corporate transferor.

4.11.52.5.3.2
(11-01-2004)
Memorandum Format or Form 3031, Report of Investigation of Transferee Liability

- (1) This memorandum/report will list the name, address, and TIN of the transferee and the transferor. It must also contain the following:
 - a. A list of all of the transferor's tax periods and their respective unpaid tax liabilities and penalties.

- b. How the transferor's unpaid tax liability was determined (from originally filed tax return, from an income tax examination). Whether the transferee is a transferee at law, or in equity, or both.
- c. A complete background and reasons for recommending the transferee action, with reference to the documentation used to determine the transferee.
- d. A list of all of the evidence for transferee at law or in equity and how that evidence relates to a factor of constructive or actual fraud in that jurisdiction. Reference the page/index number of the documentation that supports each item of evidence.
- e. An analysis of all of the transferor's assets and their disposition. Usually, the transferor will need to be questioned as to the asset disposition and documentation will need to be requested to support the analysis. The memorandum will list the specific amounts that were transferred to each transferee. It must include a description of each asset, its value on the transfer date, and the date each asset was transferred. *Assets Transferred Template* found on Knowledge Management can be used for this purpose. How the date of insolvency was determined and information relating to Examination's involvement in the case.
- f. Any attempts to conceal assets and evade payment of the taxes.

