



# MANUAL TRANSMITTAL

Department of the Treasury  
Internal Revenue Service

5.17.12

MAY 2, 2025

## EFFECTIVE DATE

(05-02-2025)

## PURPOSE

- (1) This transmits revised IRM 5.17.12, Legal Reference Guide for Revenue Officers, Investigations and Reports.

## MATERIAL CHANGES

- (1) The Background was removed from the Manual Transmittal in compliance with the style guide. The Background is contained within the IRM.
- (2) IRM 5.17.12.1: The Purpose paragraph moved and combined with previous (1) to comply with the style guide.
- (3) Editorial changes to comply with the style guide, update links and references.

## EFFECT ON OTHER DOCUMENTS

This material supersedes IRM 5.17.12 dated November 9, 2023.

## AUDIENCE

SB/SE Revenue Officers

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5.17.12

Investigations and Reports

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5.17.12.1  
(05-02-2025)  
**Program Scope and Objectives**

- (1) **Purpose:** This section illustrates the type of investigation to be performed upon receipt of an account for collection which may require a legal proceeding to assist in the collection of the account and the type of report to be prepared. It is designed to aid the Revenue Officer (RO) in securing all the necessary facts by obtaining testimony and documentary evidence. Provided in this IRM are general characteristics and procedures followed in instituting and carrying out a suit. Common types of suits commenced by the United States are discussed in IRM 5.17.4, Suits by the IRS. The principal types of suits that may be brought against the IRS which ROs may encounter are discussed in IRM 5.17.5, Suits Against the United States.
- (2) **Audience:** This IRM is used by Collection employees developing suit recommendations or responding to suits against the IRS. Primarily Collection Civil Enforcement Advice and Support Operations (CEASO) Advisory staff or Field Collection Revenue Officers (RO) use this IRM when assisting Counsel and the Department of Justice (DOJ) with defense actions related to these types of suits.
- (3) **Policy Owner:** Director, Collection Policy. Collection Policy is an organization under Small Business/Self-Employed Division (SBSE), Collection.
- (4) **Program Owner:** Collection Policy is responsible for overseeing the guidance for the, Legal Reference Guide for Revenue Officers, and in particular this IRM on, Investigations and Reports.
- (5) **Primary Stakeholders:** The primary stakeholders are Chief Counsel and DOJ attorneys.
- (6) **Program Goals:** The, Legal Reference Guide for Revenue Officers, is intended to make available to ROs and other personnel engaged in collection efforts the fundamentals of legal knowledge needed in their daily activities.
- (7) See also IRM 25.3, Litigation and Judgments.

5.17.12.1.1  
(12-07-2017)  
**Background**

- (1) The, Legal Reference Guide for Revenue Officers, has been established as a Handbook keyed to the IRM. It is not the source of procedural instructions. Revenue officers and other IRS personnel must still look to the basic IRM provisions outside the Handbook for such instructions. While ROs are not expected to have the comprehensive knowledge of the law required of attorneys, it is hoped that they will gain a sufficient understanding from the material in the following sections to recognize the legal problems that might call for reference to Counsel for consideration.

5.17.12.1.2  
(11-09-2023)  
**Authority**

- (1) This IRM is a handbook containing the elements required to develop, organize, and prepare narrative reports assisting the DOJ in litigating cases on behalf of the IRS.
  - All service wide policies are located in IRM 1.2.1, Servicewide Policy Statements, including those specifically related to collection work.
  - All service wide delegation orders are located in IRM 1.2.2, Servicewide Delegations of Authority, including those specifically related to collection work. All Small Business / Self-Employed functional delegations orders are located in IRM 1.2.65, Small Business / Self-Employed Division Delegations of Authority.

- (2) The authority to approve **most** suit recommendations is delegated to Collection Field Compliance Manager / Territory Manager (FCM/TM) and CEASO Advisory Territory Managers.

***Where Director Approval Required***

Item	Property Type
1	Secure judicial approval to seize a principal residence.
2	Foreclose the federal tax lien against the principal residence of any person. <b>Reminder:</b> This includes both a principal residence of the taxpayer as defined in section 121 and principal residence of any other person.

**Reminder:** See IRM 1.2.65.3.2 for Delegation Order 1-23-9, Approval of Form 4477, Civil Suit Recommendation.

5.17.12.1.3  
(11-09-2023)

**Roles and Responsibilities**

- (1) IRM 5.17.1, General Information, provides a list of the parties with an explanation of their role with suits.

5.17.12.1.4  
(11-09-2023)

**Program Management and Review**

- (1) **Program Reports:** Suits are individual to the case and are of a wide variety and scope. When it is appropriate the Collection employee will provide a case narrative report for Area Counsel and the DOJ identifying all pertinent facts so that appropriate legal action may be taken. Submission of suit recommendations is through the *eApproval* SharePoint platform, which provides data analytics for the program.
- (2) **Program Effectiveness:** Whenever litigation involving collection matters is pending or the institution of affirmative legal action to effect collection is being considered, ROs will, in the main, be investigators of facts. They will be required to prepare reports concerning any facts ascertained. CEASO Advisory reviews the RO recommendation package for clarity and completeness. The approving official reviews the package and if the recommendation represents an effective utilization of collection techniques, approves the package for Counsel's consideration. The lawyers charged with the responsibility make the ultimate decision of whether to proceed but must rely on those facts and reports provided by the RO when making case decisions.

5.17.12.1.5  
(11-09-2023)

**Program Controls**

- (1) CEASO Advisory maintains a copy of any suit documentation until the suit is closed. After case closure see Document 12990, Records and Information Management Records Control Schedules, under section, Internal Revenue Service Records Control Schedule (RCS) 28, Tax Administration Collection, in:
- PART III - Administrative Records - All Collection Functions, item number 38, Litigation Files, and in
  - PART IV - Delinquent Accounts, Delinquent Returns, And Office Services Records, item 45, Suits to Foreclose Federal Tax Liens, item 53, Civil Suit Recommendation, Form 4477, and in item 54 (a), Special Procedures Function Case Files.
- (2) Preserving electronically stored information is covered in:

- IRM 25.3.1.7, Preserving Electronically Stored Information In Litigation Cases,
- IRM 25.3.1.7.21, References, and
- *Chief Counsel Notice cc-2016-005, CCDM 34.7.1.1.4, Discovery Obligations to Preserve Evidence, Including Electronically Stored Information.*

5.17.12.1.6  
(11-09-2023)

(1) The table lists commonly used acronyms and their definitions:

#### Terms and Acronyms

Acronym	Definition
CCDM	Chief Counsel Directives Manual
CDP	Collection Due Process
CSED	Collection Statute Expiration Date
DOJ	Department of Justice
EOI	Exchange of Information
ESI	Electronically Stored Information
FMV	Fair Market Value
FDCPA	Federal Debt Collection Procedures Act of 1990
FRE	Federal Rules of Evidence
IRC	Internal Revenue Code
IRM	Internal Revenue Manual
MCAR	Mutual Collection Assistance Requests
NFTL	Notice of Federal Tax Lien
PALS	Property Appraisal and Liquidation Specialists
RBA	Restitution Based Assessment
RCS	Records Control Schedules
SB/SE or SBSE	Small Business / Self-Employed Division
TAS	Taxpayer Advocate Service
TBOR	Taxpayer Bill of Rights
TC	Transaction Code
TFRP	Trust Fund Recovery Penalty
UCC	Uniform Commercial Code
UFCA	Uniform Fraudulent Conveyance Act
UFTA	Uniform Fraudulent Transfer Act
USC or U.S.C.	United States Code

5.17.12.1.7  
(11-09-2023)

#### Related Resources

- (1) For procedural guidelines on recommending, working, and responding to suits and claims for damages both for and against the United States, see:
  - a. IRM 5.17.4, Suits by the United States,
  - b. IRM 5.17.5, Suits Against the United States,
  - c. IRM 5.17.14, Fraudulent Transfers and Transferee and Other Third Party Liability,
  - d. IRM 25.3.2.4.4, Required Forms, which can also be found searching the Publishing catalog, *Suit Forms* or go to the Publishing product website under Product Title select Form, and use the search term suit.
  - e. IRM 25.3 series, Litigation and Judgments,
  - f. IRM 4.10.3.4.7, Requests to Audio Record Interviews,
  - g. IRM 5.1.12.3, Recording Taxpayer Interviews, and
  - h. *Knowledge Management Suit Forms page* under **Related Forms and Documents**, click either option located there to open the page *Suits - Resources/Examples*. On that page user guides assist by walking through the suit forms and there are videos as well. There are also examples of the most common suit types.

**Reminder:** At the bottom of the form on the left side is the revision date. The revision date is particularly important for the narrative report Form 4477-B. Always use the current revision.

- i. *eApproval* suit recommendation electronic submission platform with accompanying User Guides and SHOTS videos for user assistance. *eApproval* is a controlled site and access must be requested.
- (2) The Taxpayer Bill of Rights (TBOR) lists rights that already existed in the tax code, putting them in simple language and grouping them into 10 fundamental rights. Employees are responsible for being familiar with and acting in accord with taxpayer rights. See IRC 7803(a)(3), Execution of Duties in Accord with Taxpayer Rights. For additional information about the TBOR, see <https://www.irs.gov/taxpayer-bill-of-rights>, Taxpayer Bill of Rights (TBOR).

5.17.12.2  
(11-09-2023)  
**General**

- (1) A thorough investigation requires the following:
  - Familiarity with applicable sections of IRM 5.17, Legal Reference Guide for Revenue Officers, IRM 25.3, Litigation and Judgments, and other applicable IRM provisions,
  - A working familiarity with basic theories and principles of both federal and state law,
  - Some knowledge of the law of evidence,
  - Knowledge of the manner in which business and financial transactions occur and are conducted, and
  - Full development of facts.
- (2) Be impartial and thorough in conducting the investigation. Thorough development of facts may enable the United States to avoid unnecessary litigation and to anticipate and be prepared for the taxpayer's and third parties' defenses. Full development of facts may enable Area Counsel or the DOJ to advance other theories to support a position.



5.17.12.3

(04-06-2010)

**Identification, Evaluation  
and Analysis of Issues  
and Problems**

- (1) Review existing material in the file to determine the issues in the case and those issues that, though not raised, are implicated by the information in the file. Inquire about the existence of other files not in your possession, such as examination, appeals, and criminal investigation files. The discovery of other files or material might aid substantially in narrowing or enlarging issues, providing leads and establishing a complete background to the case.
- (2) Examine the file, or files, to determine the facts that already have been developed, and whether further development is required. Determine the extent to which such facts could be proven in a court of law by evidence contained in the files.
- (3) Ascertain contentions or defenses of the taxpayer and other parties to the contemplated legal action and make a list of those facts relied upon by such parties.

5.17.12.4

(11-09-2023)

**Case Strategy**

- (1) Review the file and determine the facts that still need to be established and the evidence (oral and documentary) that needs to be secured. Develop a case strategy that includes the best sources and methods to obtain the information and the most effective order in which to secure it.
- (2) Oral evidence consists of testimony that is given by word of mouth. Documentary evidence includes, but is not limited to, the following:
  - papers
  - letters
  - books of account
  - canceled checks
  - official records
  - deeds
  - contracts
  - maps
  - photographs
  - computer disks and computer files
  - electronic messages, including emails, texts, and direct messages

5.17.12.5

(11-09-2023)

**Methods of Obtaining  
Evidence Including  
Taking and Giving  
Testimony**

- (1) **Voluntary**
  - a. If possible, evidence should be obtained voluntarily. Make no promise that the person you are interviewing (the “witness”) will or will not be called to testify as a witness in a court case. If asked, just reply that the witness may or may not be called to testify.
  - b. In obtaining evidence, whether testimonial or documentary, from persons other than the taxpayer, follow all statutory requirements and internal guidelines concerning third party contacts to comply with IRC 7602(c). See IRM 25.27.1, Third Party Contact Program.
- (2) **Use of Summons**
  - a. If the witness does not voluntarily give oral testimony or documentary evidence, use the administrative summons to obtain the necessary testimony or documents. If the case is already pending in court, clear the use of the summons with Area Counsel and/or DOJ. See IRM 5.17.6, Summonses, for a discussion on the proper use of a summons and related problems.

- b. In obtaining testimonial evidence from witnesses, it is desirable that the initial conversation be informal so that the witness will feel at ease. In the event of an obviously recalcitrant witness, place the witness under oath to take testimony.

(3) **Taking Testimony:**

- a. The witness should respond to the questions in their own words.
- b. Let the witness do most of the talking.
- c. Avoid having the witness respond “yes” or “no.”
- d. Do not ask leading questions, i.e., questions that suggest an answer in the witness’s mind.
- e. Witnesses are sometimes forgetful and not entirely accurate. Accordingly, solicit the testimony of other persons or documentary evidence to corroborate the testimony of the witness.
- f. Establish that the witness has personal knowledge of the facts with respect to which the witness is testifying. Otherwise, the testimony may not be admissible as evidence in a court of law.

(4) **Witness Credibility:** Consider the credibility of the witness.

**Questions to Address Witness Credibility**

Item	Question
1	How logical is the testimony?
2	What is the witness’ reputation for truth and veracity?
3	Is the witness in any way involved in the case?
4	Is the witness biased for or against or related to the taxpayer?

**Note:** The Fifth Amendment privilege protects an individual against self-incrimination in situations where there is a “substantial hazard of self-incrimination.” It is invoked as a defense against summons compliance. The Fifth Amendment may be claimed in response to both documentary requests and requests for oral testimony. Only individuals can claim this privilege. Corporations and other entities are not protected by the Fifth Amendment. See IRM 25.5.5.4.1, Fifth Amendment Privilege Against Self Incrimination.

(5) **Giving Testimony:** See -

- IRM 10.5.7.9(2), Pseudonym Holders, the Courts and Legal Matters,
- IRM 9.6.4, Trial,
- *CCDM 35.6.2.3, Etiquette in Addressing the Court and Courtroom Decorum*, and
- *CCDM 35.6.2.11, Direct Examination and Cross-Examination of Witnesses*

(6) The *Federal Rules of Evidence*(FRE) as amended effective December 1, 2024 are rules governing admissibility of evidence in the United States Federal court system. While the FRE apply only in Federal courts, a majority of states have adopted similar or identical rules for use in their respective courts. Evidence is considered relevant if it tends to make any fact that is of consequence in the case more or less likely than it would be without the evidence. Relevant evidence is generally admissible. Evidence which is not relevant is inadmissible.

See FRE Article IV, Rules 401 and 402. However, some relevant evidence may be inadmissible. See FRE Article IV, Rules 403. Generally, only evidence relevant to the case is admitted before the court.

- (7) Evidence and case documentation become subject to a litigation hold when litigation is pursued. Electronically Stored Information (ESI) is part of any litigation hold. Review IRM 25.3.1.7, Preserving Electronically Stored Information In Litigation Cases, for information on ESI and Chief Counsel's, *Litigation Hold* site to prepare for a litigation hold.

5.17.12.6  
(11-09-2023)

**Admissions and Hearsay**

- (1) Record any statement by a party against the party's own interest, because the admission of an unfavorable fact will be of value in proving the truth of the fact.
- (2) Hearsay (i.e., *FRE* Article VIII) is evidence that does not come from the personal knowledge of the witness, but from the mere repetition of what the witness has heard said by others, or what others have told the witness. Exercise care to insure that the witness has actual knowledge of the facts stated. Hearsay generally may not be used as evidence, but hearsay may lead you to the witness with actual knowledge of the facts. See also *FRE* Article VIII, Rule 803, Exceptions to the Rule Against Hearsay.

5.17.12.7  
(11-09-2023)

**Documentation of Testimony**

- (1) Make a written memorandum of an interview immediately thereafter, even though it does not appear that the person will be called as a witness or that the information will be of any immediate value.
- (2) A formal affidavit (notarized) containing a complete summary of the desired information may be solicited. For example, if there is reason to believe that the witness might change the testimony at a later date, request the witness to give a formal affidavit.
- (3) If the witness is unwilling to give a formal affidavit, attempt to obtain the signature of the witness on a typed or handwritten summary of the desired information.
- (4) If the witness is unwilling to sign a statement, consider using an administrative summons and having a stenographer prepare a verbatim transcript of the questioning.
- (5) The interview may also be recorded.

**Note:** Consult IRC 7521, Procedures involving taxpayer interviews, for procedures to follow involving taxpayer interviews. See IRM 4.10.3.4.7, Requests to Audio Record Interviews, and IRM 5.1.12.3, Taxpayer Recording of Interviews, for procedures regarding taxpayer requests to make an audio recording of an in-person interview.

5.17.12.8  
(11-09-2023)

**Documentary Evidence**

- (1) Obtain the originals of documents whenever possible. If not available, make photocopies of the originals. In all cases, show the source from which the document was obtained. Obtain necessary documents at the outset, removing the possibility that they might be later lost or otherwise unavailable. Including significant items of evidence such as civil penalty approvals (e.g. Form 8278 or other applicable approval document for IRC 6751 compliance).

**Caution:** Where applicable, all collection suit referrals must document whether IRC 6751 penalty approval applies and whether there was compliance with the supervisory approval requirements in IRC 6751(b) for each penalty in the suit referral. Consult with CEASO Advisory or Area Counsel with any questions. References IRM 35.4.1.6.3, Chief Counsel Directives Manual – Tax Court Litigation, Pre-Trial Activities, Trial Planning, Section 6751(b) Penalty Approval Requirement and IRM 35.2.2.3.9(2), Chief Counsel Directives Manual – Tax Court Litigation, Petition and Answer, Answers, Affirmative (New) Issues.

- (2) Consider the authenticity of documents. If there are circumstances that raise a doubt as to authenticity, Criminal Investigation may be of assistance.
- (3) Verify information in documents. When a mortgage, deed, assignment, conditional sales contract, or other security device is a material factor in the case, verify the alleged facts on the face of any such instrument. Do not rely on information provided in a letter, by telephone, or orally. Examine the document itself.
- (4) Determine whether all filing and recording requirements of state law have been satisfied that are necessary to perfect the document against third parties. Carefully scrutinize family transactions to determine whether consideration actually passed. When the outstanding balance on a mortgage remains unchanged over a period of time, it could mean that it is a sham.
- (5) Whenever possible, secure certified copies of documentary evidence. Any internal IRS transcript or other document can be certified as well. To preserve their value as self-admitting evidence, certified document copies must not be marred, defaced, or altered in any way.

5.17.12.9  
(11-09-2023)

**Sources for  
Documentary Evidence**

- (1) Public Records — Public records such as copies of mortgages or assignments, deeds, or conditional sales contracts, may be obtained from the county recorder or other appropriate officer with whom they are required to be filed under state recording statutes. If the taxpayer, or other party, has testified in any court regarding the transaction in question, a certified copy of the relevant portion of the transcript may be desirable. If the taxpayer is a corporation, the files of the state custodian of corporate records may provide valuable information.
- (2) Within the IRS — Area Counsel or DOJ may, request special agents' or revenue agents' reports, the taxpayer's income, estate, gift, or employment tax returns for prior years, tax returns of related entities or parties, trust fund recovery penalty files, miscellaneous civil penalty approvals (e.g. Form 8278 or other applicable approval document for IRC 6751 compliance), and other records in certain circumstances. The originals of these documents may be needed for litigation where the underlying liability is challenged or is the result of a substitute for return process. Where there are no complications, the certified transcript Form 4340, Certificates of Assessments and Payments, is acceptable documentation for internal data sources.

**Note:** Discussing the case with special agents or revenue agents who have worked the case may be valuable, as they may have knowledge of information not contained in the written report.

**Reminder:** Where applicable, all collection suit referrals must contain a discussion of whether IRC 6751 penalty approval applies and whether there was compliance with the supervisory approval requirements in IRC 6751(b) for each penalty in the suit referral. Consult with CEASO Advisory or Area Counsel with any questions. References IRM 35.4.1.6.3, Chief Counsel Directives Manual – Tax Court Litigation, Pre-Trial Activities, Trial Planning, Section 6751(b) Penalty Approval Requirement and IRM 35.2.2.3.9(2), Chief Counsel Directives Manual – Tax Court Litigation, Petition and Answer, Answers, Affirmative (New) Issues.

- (3) Other federal and state agencies — state and federal agencies such as the State Insurance Commissioner, the Small Business Administration, and the State or Federal Securities and Exchange Commission may have information of a non-public nature that may be of assistance.
- (4) Commercial institutions — Life insurance companies may provide copies of policies; banks may provide canceled checks in some cases or transcripts of account; and loan companies or loan departments of banks may provide copies of financial statements prepared by the taxpayer.

**Note:** Evidence of different facts must be obtained for different cases. For example, the facts needed to establish transferee liability would be different from the facts needed to establish liability for failure to honor a levy.

5.17.12.10  
(11-09-2023)  
**Suits to Reduce Tax  
Claims to Judgment**

- (1) Probability of litigating the merits — if suits for judgment are recommended, taxpayers may deny liability for the taxes involved. Anticipate such arguments at an early stage and take steps to obtain the original tax returns, revenue agents' reports, and other assessment related files for the account modules in question to avoid their destruction. Ensure that CEASO Advisory, Area Counsel, and DOJ are aware that these types of administrative files are available upon request. Discuss the probability of litigation on the merits in the suit recommendation.

**Note:** Under *United States v. Westbrook*, 858 F. 3d 317, 328 (5th Cir. 2017), vacated on other grounds by 138 S. Ct. 1323 (2018) certain Restitution Based Assessments (RBA) have an exception limiting the Collection Statute Expiration Date (CSED). When a limited period of enforceability applies under this exception, the IRS cannot file suit to reduce the RBA to judgment in order to extend the CSED. See IRM 5.1.5.18(4), Collection Actions on Cases with Restitution-Based Assessments (RBA).

- (2) Previous court litigation and appeals settlements — often the liability in question has been determined in the IRS' favor by proceedings in the tax court, by the allowance of tax claims in bankruptcy and receivership proceedings, or by other court action. In such cases, the taxpayer may not contest the case on the merits again. Similarly, if a case has been settled by mutual concessions in Appeals, the taxpayer may be precluded from raising the merits. (See IRM 8.6.4.4 , Agreements Forms Secured in Appeals Cases). Make reference to any court decisions or settlements and include copies of any such decisions or settlement agreements, if possible, in the suit recommendation.
- (3) Collectibility of the Judgment — discuss the taxpayer's earning power, age, health, business connections, marital status, dependents, and the possibility of inheriting or acquiring assets from others.

- (4) For an example of a suit to reduce claims to judgment see *Knowledge Management Suit Forms Page* under **Related Forms and Documents** click either option located there to open the page *Suits - Resources/Examples*.

**Example:** On that page is *Example Reduce Claims to Judgment*.

**Reminder:** Submission of suit recommendations is through the *eApproval* Share-Point platform, which also contains User Guides for assistance. *eApproval* access is controlled and access must be requested.

5.17.12.11  
(11-09-2023)  
**Fraudulent Transfers  
and Transferee and  
Other Third Party  
Liability**

- (1) **Fraudulent Conveyance.** The DOJ, on behalf of the IRS, may bring a fraudulent transfer action to set aside the transfer, or in some instances, to obtain a judgment of liability against the transferee.
- a. **State law.** Fraudulent conveyance laws were initially developed by state courts. That common law is reflected now in state statutes based on the, Uniform Fraudulent Conveyance Act, (UFCA) (proposed in 1918) and the, Uniform Fraudulent Transfer Act, (UFTA) (proposed in 1984). The liability under these laws is termed “in equity” because of the common law origin. Most states have enacted statutes based on the UFTA. There are two kinds of fraudulent conveyances that may result in liability “in equity”: those effected though constructive fraud and those effected though actual fraud. See IRM 5.17.12.11, at (2) and (3), below, respectively. The elements of an action vary state by state even if a statute is based on a uniform act: e.g., a state may change an element provided in the uniform act or retain an element of the common law in its statute. A state might continue to allow an action based on the common law and if so precedent under that common law may make it a preferred alternative to an action based on a statute.
  - b. **Federal law.** The, Federal Debt Collection Procedures Act of 1990, (FDCPA), 28 U.S.C. 3001 et seq., provides a federal cause of action for fraudulent transfers. Provisions regarding fraudulent transfers involving debts are at 28 U.S.C. 3301-3308 (Subchapter D). Section 28 U.S.C. 3304 provides a remedy similar that provided by the UFTA. For debts arising before a transfer, see 28 U.S.C. 3304(a) (compare constructive fraud under UFTA), and for transfers without regard to the date the debt arose, see 3304(b) (compare actual fraud under UFTA). The FDCPA should complement state procedures; but, if not, the Act preempts any state law that is inconsistent with the Act; see 28 U.S.C. 3003(d).
- (2) **Constructive Fraud** — constructive fraud occurs when a taxpayer (or other person liable for the tax) makes a conveyance and such taxpayer or person is or will be thereby rendered insolvent when the conveyance is made without adequate consideration. Discuss in detail the facts pertaining to:
- The transfer of assets made when the transferor was liable for the tax. While tax liability arises at the end of the tax year, a transfer made during the tax year may give rise to a contingent tax liability at the time of the transfer in some jurisdictions,
  - The insolvency of the taxpayer as of the date of transfer, or immediately thereafter,
  - The absence of reasonably equivalent value or fair consideration (terminology depends on the statute) in exchange for the transfer, and



- The value of the assets (fair market value) on the date of transfer, which generally determines the limits of the transferee liability.

**Reminder:** See also IRM 5.17.14.3.3.2.2.1 , Constructive Fraud.

**Note:** See IRM 5.10.1.5.3.2, Equity Determination - Fair Market Value, for determining Fair Market Value (FMV). Where an accurate fair market value is not easily determinable, consider contacting the property appraisal and liquidation specialists (PALS) to discuss how to value the property or to request that the PALS provide an appraisal for the property.

- (3) **Actual Fraud** - Transfer With Actual Intent To Hinder, Delay or Defraud Creditors — the proof must be clear and convincing to set aside a conveyance on the ground of actual intent to defraud the government. Usually it is impossible to prove actual fraudulent intent by direct evidence because the facts relating to the fraudulent transfer are within the knowledge of the taxpayer or other transferor. Proof of the fraud must, therefore, usually come by inference from circumstances surrounding the transaction and the relationship and interest of the parties thereto. To establish actual intent to defraud creditors, thoroughly analyze and discuss the facts and evidence relating to:
- a. Knowledge of the transferor's intent by the transferee, the parties involved, and their relationship,
  - b. The property transferred or obligation incurred, the value of the property at the time of the transfer and its current value, and
  - c. Competing claims to the property by bona fide lien holders or security holders.

**Reminder:** See also IRM 5.17.14.3.3.2.2.2, Actual Fraud.

- (4) **Transferee and Other Third Party Liability.** State law may provide that in a particular situation the transferor's tax liability is directly imposed on the transferee. The imposition of liability under these laws is termed "at law."
- a. **Bulk sales.** Most states have adopted some form of the Uniform Commercial Code (UCC). Article 6 of the UCC governs bulk sales and establishes liability of persons who purchase substantial inventory or equipment from a merchant if certain procedures are not followed.
  - b. Transfers or distributions leaving the person without enough assets to pay debts.

**Note:**

#### References

IRM Number	IRM Title
IRM 5.17.14.3.3.3	Trust Fund Doctrine
IRM 5.17.14.3.3.5	Transferee Liability of a Shareholder or Distributee of a Corporation
IRM 5.17.14.3.3.1(3)	Transferee Liability Directly Imposed on the Transferee (At Law) at d. (distributions upon dissolution of corporation).

- c. Corporate merger or consolidation statutes.

**Reminder:** See also IRM 5.17.14.3.3.4 , Successor Liability of a Corporation as a Transferee.

- d. Transfers made as a part of a scheme to avoid debts; e.g., sale of assets to another corporation that is tantamount to a “de facto merger” or a “mere continuation.”

**Reminder:** See also, IRM 5.17.14.3.3.4(4) , Successor Liability of a Corporation as a Transferee.

- e. Transferee entered into a contract in which the transferee expressly or implicitly agreed to assume the transferor’s tax liability.

**Note:** Consult with Area Counsel for advice in cases involving issues of this type.

- (5) See IRM 5.17.14, Fraudulent Transfers and Transferee and Other Third Party Liability, for additional information regarding suits to set aside fraudulent transfers.
- (6) For assistance and examples of suits involving transfers see the following references -

Item	Location
1	<i>Knowledge Management Suit Forms Page</i> under <b>Related Forms and Documents</b> click either option located there to open the Forms Link page.
2	<i>Suits - Resources/Examples</i> . This page has suit package examples.
3	<i>Example Constructive Fraud - Set Aside a Transfer</i>
4	<i>Example Transferee Liability (Estate Beneficiary) plus Assertion -v- Fiduciary</i>
5	IRM 5.17.12.20.2.2.2, Additional Items for Setting Fraudulent Transfer Aside Based on Constructive Fraud.
6	IRM 5.17.12.20.2.2.5, Additional Items for Establishing a Transferee Liability.

**Reminder:** Submission of suit recommendations is through the *eApproval* Share-Point platform, which also contains User Guides for user. *eApproval* access is controlled and access must be requested.

5.17.12.12  
(11-09-2023)  
**Lien Foreclosure  
Actions**

- (1) Property Involved - accurately describe the property. Appraise the property, state the current forced sale and fair market values and how they were derived. Ensure reliable sources and methods are used. Indicate what steps can be taken, if any, to generate interest among prospective buyers.

**Note:** If the property under consideration for foreclosure consists of assets where an accurate fair market value is not easily determinable, it is highly recommended that the RO contact the PALS to discuss how to value the property or to request that the PALS provide an appraisal for the property.

- (2) Competing Claims or Liens



- a. Perform thorough property records checks and secure certified copies of all documents evidencing claims to or liens on the property. Ensure records checks are current and accurate.
- b. **Do not alter** certified documents in any way. This restriction includes any sort of alteration or defacement to the documents, including marking or writing on them, affixing labels or tabs, cutting them, punching holes in them, or stapling or unstapling them.
- c. Identify the owners of competing claims or liens and state their current addresses.
- d. Describe the type of claim or lien (for example, mortgage, trust deed, contract for sale, state tax lien).
- e. State the date of the instrument.
- f. Give recording data (date and place of filing, book and page number, where lien is filed).
- g. State the original amount of the claim.
- h. Determine and provide the outstanding balance, including amount of principal, interest and other charges separately stated.
- i. Discuss the validity of the competing claim or lien or any of its terms or conditions that are questionable.
- j. Discuss whether any action has been taken or is to be taken to enforce the competing claim or lien, the nature of such action, the court in which it is pending, and its current status.

**Reminder:** For assistance and an example see the following references -

Item	Location
1	<i>Knowledge Management Suit Forms Page</i> under <b>Related Forms and Documents</b> click either option located there to open the Forms Link page.
2	<i>Suits - Resources/Examples</i> . This page has suit package examples.
3	<i>Example Principal Residence Foreclosure with Judgment and 2nd Property</i>
4	IRM 5.17.12.20.2.2.4, Additional Items for Lien Foreclosure of Taxpayer's Principal Residence.

**Reminder:** Submission of suit recommendations is through the *eApproval* Share-Point platform, which also contains User Guides and for user assistance. *eApproval* access is controlled and access must be requested.

- (3) For lien foreclosure on a taxpayer's principal residences, also see IRM 5.17.4.8.2.5, Lien Foreclosure on a Principal Residence, and IRM 5.17.12.20.2.2.4, Additional Items for Lien Foreclosure of Taxpayer's Principal Residence.

5.17.12.13  
(11-09-2023)  
**Suits for Failure to  
Honor Levy**

- (1) Include the following information in the suit recommendation:
  - Name and address of person failing to honor levy,
  - Dates on which all collection notices were served,
  - Dates of contact for purpose of requesting payment,
  - A full description of the property or rights to property levied upon,

- A discussion of the facts establishing the taxpayer's interest in the property or right to property,
- Information as to whether the debt is disputed,
- Contentions advanced by the person levied upon, and
- Facts tending to controvert the contentions of the person levied upon.

**Note:** If there are competing claims to the property or right to property levied upon, it may be necessary for the IRS to institute an action to foreclose the federal tax lien(s), rather than to bring an action to enforce the levy, in which case you should provide information necessary for lien foreclosure actions.

**Reminder:** For assistance and an example see the following references -

Item	Location
1	<i>Knowledge Management Suit Forms Page</i> under <b>Related Forms and Documents</b> click either option located there to open the Forms Link page.
2	<i>Suits - Resources/Examples</i> . This page has suit package examples.
3	<i>Example Failure to Honor Levy</i> .
4	IRM 5.17.12.20.2.2.1, Additional Items for Failure to Honor Levy.

**Reminder:** Submission of suit recommendations is through the *eApproval* Share-Point platform, which also contains User Guides and SHOTS videos for user assistance. *eApproval* access is controlled and access must be requested.

5.17.12.14  
(05-24-2019)  
**Interpleader Suits**

- (1) The complaint of the stakeholder-plaintiff will usually describe the property in question and the parties claiming rights to it. Analyze the complaint to determine what type of action should be taken to protect IRS's rights to property.
- (2) On occasion, you will learn of litigation between the taxpayer and other parties, the result of which may add to or diminish the taxpayer's assets. In such cases, if administrative remedies are not sufficient protection or are impractical, determine whether intervention is desirable or necessary.

5.17.12.15  
(11-09-2023)  
**Other Suits in Which Government or Employee Is Defendant**

- (1) In some cases, such as injunction proceedings, quiet title actions, or suits for damages in which the Government is the defendant, you may be requested to make reports of events that have culminated in litigation or to investigate and make reports on some feature of the litigation. In such cases, use the same general principles set forth in this section to prepare the report. See also IRM 5.17.5, Suits Against the United States.

5.17.12.16  
(11-09-2023)  
**Other Suits in Which Affirmative Action is Sought To Be Taken**

- (1) On occasion, you may recommend the institution of miscellaneous types of proceedings such as:

- Suits against sureties under the performance bond provisions of the Miller Act (see IRM 5.17.7.3, Liabilities of Sureties - Bond on Public Works Contracts, and IRM 5.1.14.4, Performance Bond Provisions of the Miller Act),
- Suits against third parties paying or supplying funds for payment of wages (see IRM 5.17.7.2, Liability of Third Parties Paying or Providing Wages, and IRM 5.1.14.3, Liability for Third Party Paying Wages or Supplying Funds for Payment of Taxes),
- Suits on bonds (see IRM 5.1.14.4.1, Procedures for Holding Surety Liable for Unpaid Withholding Taxes),
- Proceedings to obtain writs of entry (see IRM 5.17.4.13, Writs of Entry),
- Suits to recover erroneous refunds (see IRM 5.17.4.14, Suits to Recover Erroneous Refunds), or
- Proceedings to obtain permission to seize the principal residence of a taxpayer (see IRM 5.17.4.9, Proceeding to Seize a Principal Residence).

(2) Use the general principles set forth in this section to prepare the report.

**Reminder:** Submission of suit recommendations is through the *eApproval* Share-Point platform, which also contains User Guides and SHOTS videos for user assistance. *eApproval* access is controlled and access must be requested.

5.17.12.17  
(04-06-2010)  
**Preparation of the  
Report: Initial Steps**

- (1) Consultation with Manager
- Discuss findings and proposed recommendation.
  - Discuss difficult problems and questions encountered in the investigation.
  - Re-read appropriate earlier sections and other material relevant to the particular case.
  - Advisory and Area Counsel may also be consulted for advice.

5.17.12.18  
(12-07-2017)  
**Follow An Outline**

- (1) Reduce material gathered to an outline before preparing the narrative report.
- (2) Organize material in a sequential or chronological form.
- (3) Focus on significant points.
- (4) Form 4478, Civil Suit Checklist, is helpful, but is not a substitute for a well developed narrative report.

5.17.12.19  
(11-09-2023)  
**General Suit  
Recommendation  
Guidelines**

- (1) All suit recommendation documents are prepared in electronic format using either the individual *civil suit forms* or the recommended auto populate Form 4477-D, Civil Suit Package. Suit recommendation submissions, including all reviews and approvals are through the *eApproval* electronic SharePoint platform. Comprehensive content for the Narrative Report is discussed in sub-section IRM 5.17.12.20. The entirety of that section and its sub-sections are devoted to the Narrative Report.
- (2) Instructions on preparing the forms in the recommendation package are in IRM 25.3.2, Suits by the United States. Also, from the *Knowledge Management Suit Forms page* under **Other Related Resources**, click either option located there to open the page *Suits - Resources/Examples*. On that page is a webinar

walking through the suit forms, power point tutorials for the different form revisions, and examples of the most common suit types.

**Reminder:** At the bottom of the form on the left side is the revision date. The revision date is particularly important for the narrative report Form 4477-B. Select the tutorial for revision used.

- (3) The suit forms are designed for an electronic presentation of the recommendation package. The recommendation review and approval process is an all-electronic process through *eApproval*. The platform contains user guides to assist users. Exhibits should also be electronic and uploaded to *eApproval*. There may be exceptions where DOJ specifically needs an original return. If a revenue agent report with original returns contain numerous staples and hole-punches, do not exacerbate this by adding additional staples or hole-punches.
- (4) The recommendation package contains the forms walking users through the process. A listing of the suit forms is provided below. The auto populate Form 4477-D package contains the forms in one package. The forms remain individually available where an additional form is needed or for circumstances where the auto populate package will not suffice:
  - a. Auto populate package Form 4477-D, Civil Suit Package, contains all the forms except Form 4481, which is exclusively for CEASO Advisory's use. This package can be accessed from ICS providing a link to the publishing site. Always download the current version to the computer desktop for ease of use:
  - b. Individual Form 4477, Civil Suit Recommendation,
  - c. Form 4477-C, Civil Suit Table of Contents and Contact List, which includes the ability to build an index of exhibits or table of contents,
  - d. Form 4477-B, Civil Suit Narrative Report,
  - e. Form 4478, Civil Suit Checklist,
  - f. Form 4479, Civil Suit Property, Liens, and Claims,
  - g. Form 4480, Civil Suit Service of Legal Papers, and
  - h. Form 4481, Civil Suit Transmittal of Legal Action to Counsel.
  - i. Additional forms that may be useful include: the excel version of Form 4477-A and the Basis Tool, both of which are located along with their user guides on the *Suits - Resources/Examples* page.

**Reminder:** Electronic submission of suit recommendation packages is through *eApproval*

5.17.12.20  
(10-16-2007)  
**The Narrative Report**

- (1) Purpose — To present in a logical sequence all pertinent facts so that appropriate legal action may be taken. The report must be written so that the reader understands the significance of its contents and is persuaded to act on it.
- (2) Qualities of a Good Report:
  - Impartiality
  - Accuracy
  - Completeness
  - Conciseness
  - Logical arrangement of material
  - Each paragraph is limited to one topic sentence or issue
  - Coherence
  - Proper spelling and grammar

- Important facts are emphasized

**Note:** If the volume of facts or statistics in a paragraph are so voluminous as to hinder readability, consider assembling the data in a table attached as a numbered, referenced exhibit.

- (3) Avoid using abbreviations in the narrative report. If acronyms are used, ensure that the words are initially spelled out.

5.17.12.20.1  
(10-16-2007)

#### **Contents of the Narrative Report**

- (1) A complete narrative report should include the following:

- A separate narrative statement of the case.
- Numbered paragraphs to facilitate form and report references.
- The check list data contained on any applicable form.
- Exhibits identified by number and referenced in the narrative report. Tables, transcripts and summaries should show the source of the information.
- A list of witnesses and proposed defendants, together with the complete address of each.

**Note:** Forms 4477 through 4481 are not a substitute for a complete narrative report in recommending litigation of any type, although they may be referenced in the report. The notation "See Report" should appear in the appropriate blocks on the forms.

5.17.12.20.2  
(12-07-2017)

#### **Format of the Form 4477-B Narrative Report**

- (1) The Narrative Report is Form 4477-B and is in a report format rather than memorandum format.

- (2) Form 4477-B divides the narrative report into three sections:

- Introduction
- Body
- Conclusions and Recommendation

- (3) Form 4477-B contains instructions mirroring the IRM sections below.

5.17.12.20.2.1  
(05-24-2019)

#### **Narrative - Form 4477-B INTRODUCTION Items Included**

- (1) The type of suit and reason for recommendation.
- (2) The amount of money expected to be recovered.
- (3) The type of tax and outstanding balance. Details can be incorporated by reference to the **Basis of Assessment**, Form 4477-B Body subsection and associated table.
- (4) The date the earliest and/or imminent statute of limitations on collection will expire
- (5) A statement that administrative remedies are impractical, or that administrative remedies have been exhausted, and the reasons why administrative remedies have not been effective
- (6) A statement that urgent action is required when necessary, and the reasons for urgent action.

5.17.12.20.2.2  
(11-09-2023)

- (1) **Taxpayer Information:** Brief personal history and description of the taxpayer as appropriate and other significant parties, including:

**Narrative - Form 4477-B**

**BODY - General Items**

**Included**

***For Individuals***

Item	Description
1	Age, marital and family status including domestic partnerships,
2	Known health issues,
3	Occupation or business activity,
4	Other pertinent information that may have bearing on the suit, and
5	Discuss the <b>Filing and Payment Compliance</b> history.

***For Non-Individuals***

Item	Description
1	Description of the entity,
2	Date and state of incorporation,
3	Principals,
4	Location of the principal executive office (State or jurisdiction location of entity) including the name, title (if applicable), and physical address of the statutory agent for service,
5	Business Activities (i.e. past and/or present business operation),
6	Other pertinent information that may have bearing on the suit,
7	Discuss the <b>Filing and Payment Compliance</b> history.

***For Estates***

Item	Description
1	Name of the estate and explain estate's status (i.e. closed, disbursed, etc.),
2	Date of Death,
3	IRC 6324 estate tax lien expiration,
4	Fiduciary name,
5	Beneficiary name(s),
6	Disbursements (i.e., who, when, how, and what property was disbursed),
7	Whether administrative procedures under IRC 6901 can be used. <b>Reminder:</b> Administrative procedures are less costly and should be used whenever possible instead of recommending suit. See also IRM 5.17.14, Fraudulent Transfers and Transferee and Other Third-Party Liability,

Item	Description
8	Detail on: Tax Court proceedings; supplemental or amended estate or gift returns; IRC 6161 extensions to pay and IRC 6166 deferrals; identify and specify whether property in: probate, non-probate, or trust, assets subject to the court's supervision or administered independently, inventory and appraisal, and probate records: open or closed, docket sheet, annual accountings, and beneficiary settlement documents. See also IRM 5.5.7.22.4.5, Writing a Narrative for an Estate Tax Suit Referral, and IRC 7404, Authority to bring civil action for estate taxes, and
9	Discuss the <b>Filing and Payment Compliance</b> history.

- (2) **Additional Items for Specific Suit types:** Information specific to the suit types in the list below are addressed when applicable after the Taxpayer Information subsection in the Body of Form 4477-B, Civil Suit Narrative Report.
- IRM 5.17.12.20.2.2.1, Additional Items for Failure to Honor Levy,
  - IRM 5.17.12.20.2.2.2, Additional Items for Setting Fraudulent Transfer Aside Based on Constructive Fraud,
  - IRM 5.17.12.20.2.2.3, Additional Items for Recovering Erroneous Refunds,
  - IRM 5.17.12.20.2.2.4, Additional Items for Lien Foreclosure of Taxpayer's Principal Residence,
  - IRM 5.17.12.20.2.2.5, Additional Items for Establishing a Transferee Liability, and
  - IRM 5.17.12.20.2.2.6, Additional Items for a Repatriation Order.
- (3) **Suit Justification:** Reasons why suit is justified, particularly in a suit to reduce a tax claim to judgment if there is no immediate prospect of recovery on the judgment, and if the anticipated proceeds are below the criteria set forth in IRM 25.3.2.3, Criteria for Bringing Suit.
- (4) **Basis for Assessment:** Provide the basis for the assessment to the extent that information is available to you, including protest, appeal, and Tax Court data. If administrative files are not available, include additional details concerning the assessment such as whether the assessment is a:

***Examples of Underlying Bases for Assessments***

Item	Description
1	Tax liability as shown on the tax return
2	Deficiency based on Tax Court decision
3	Deficiency that the taxpayer agreed to
4	Deficiency not agreed to and petition not filed with Tax Court. Give basis for the deficiency by furnishing a copy of the Revenue Agent's Report
5	Fraud case. If so, state whether there was criminal prosecution
6	Jeopardy assessment. If so, state the basis of the tax determination.

**Reminder:** The Basis for Assessment table in the narrative report has a list to select from. Additional forms that may be useful include: the excel



version of Form 4477-A and the Basis Tool, both of which are located along with their user guides on the *Suits - Resources/Examples* page.

- (5) Additional assessment details may be needed:

Item	Description
1	Date of assessment
2	Date of Notice and Demand
3	<p><b>Original (total) Assessed Amount:</b> Breakdown of assessment, not reduced by any subsequent payments or abatements, showing type and amount of tax (show penalty and interest separately) and describe the penalty using the applicable section of the Code, such as IRC 6651, IRC 6654, or IRC 6656.</p> <p><b>Example:</b> TC 150, TC 166 (IRC 6651), TC 196, TC 300, TC 176 (IRC 6654), TC 196</p>
4	<p><b>Current Balance Due:</b> The tax, penalty and interest currently outstanding (show the tax, penalty and interest separately and provide the rate of daily accrual of interest)</p>

**Reminder:** The *Suit Resources and Examples* page has both the Excel version Form 4477-A, Data Capture Spreadsheet, and the Excel *Basis Tool*, for use calculating this table along with a User Guide for assistance.

- (6) **Timeliness of Assessment:** If the assessment was made after the normal period for assessment had expired, explain why the assessment was nevertheless timely. This may include information that fraud was involved, that a return was not filed, that a waiver extending the time for assessment was secured, or that other appropriate justification exists. See IRM 5.17.4-1, *Suits by the United States, Limitation Upon Assessment*, and IRM 25.6.1.9, *Statute of Limitations Processes and Procedures, Assessments*.
- (7) **CSED:** The date the statute of limitations for collection will expire. If the normal period for collection has expired, explain why the filing of the proposed suit will be timely and show how the current Collection Statute Expiration Date (CSED) was derived. This could include providing any CSED Calculator worksheet as documentation. See IRM 5.17.4-2, *Legal Revenue Officer Guide — Suits by U.S. -- Limitation Upon Collection*, IRM 5.1.19, *Collection Statute Expiration*, and *CSED Calculator*. Obtain copies of waivers, offers in compromise, etc., and incorporate them as exhibits when appropriate.
- (8) **Notices of Federal Tax Lien and Special Condition NFTL:** Discuss lien and NFTL status. Provide any Nominee, alter ego, and other special condition NFTL information.
- (9) **Jeopardy Information:** if applicable.
- (10) **Appeals and Collection Due Process:** Information regarding compliance with CDP and notice requirements and other taxpayer rights, including any appeals and results:



**Collection Due Process Code Sections**

Code	Description
IRC 6320	For suits to foreclose a tax lien, interpleader suits, and other suits in which the filing of a Notice of Federal Tax Lien (NFTL) is significant, provide information regarding compliance with the Collection Due Process (CDP) requirements.
IRC 6330 and IRC 6331(d)	<p>If Letter 1058, Notice of Intent to Levy and Notice of Your Right to a Hearing, was issued to the taxpayer, provide information regarding compliance with the CDP requirements.</p> <p><b>Note:</b> Whether a levy should be issued to the taxpayer prior to a suit being recommended will depend upon the facts of the case. IRM 5.17.4.7(2), Suit to Reduce Assessments to Judgment, provides that a suit in aid of collection of taxes will not usually be authorized unless all administrative remedies available have been exhausted or their use would prove ineffective. The issuance of a levy to the taxpayer would be an administrative remedy that must be exhausted or determined to be ineffective prior to recommending that a suit be filed against the taxpayer.</p>

**Include This CDP Information to The Extent Possible**

Item	Description
1	Date CDP Notice was sent or served. Secure originals, facsimiles, or copies of the notices and attach them as referenced exhibits.
2	The address to which the notice was sent (if hand delivered, the name of the person served and the address where the notice was served or left).
3	Method of service of the notice (certified mail, certified mail with return receipt requested, or hand delivery).
4	If mailed, whether the notice was returned either as unclaimed or as undeliverable.
5	Date the taxpayer's request, if any, for a CDP Hearing or an equivalent hearing was received.
6	A copy of any Notice of Determination or Decision Letter issued by Appeals.
7	Date, if any, taxpayer filed for judicial review of Appeals Notice of Determination and a discussion of the court's disposition of the case.
8	Computation of the statute of limitations for collection.

**Note:** CDP information can be significant even if not required for the action at issue because it demonstrates opportunities the taxpayer had to challenge the liability or the IRS's actions and the outcome of any prior challenges. Such opportunities can be significant in countering issues raised by the taxpayer during litigation. However, compliance with CDP requirements is not required before initiating litigation to collect a liability unless required for the specific actions at issue, such as in a suit to enforce a levy. If a request for surplus proceeds must be made under state law after a foreclosure sale and the state deadline does not leave enough time to comply with the CDP requirements, consider making an escrow demand under state law instead of a levy.

**Reminder:** If CDP information is not available because of the age of certain actions or other extenuating circumstances, the unavailability, the circumstances, and the attempts to gather the information must be fully explained and documented in the narrative.

- (11) **Related Cases:** If there are any related cases, provide a brief summary.
  - (12) **Trust Fund:** If trust fund taxes are involved, state whether the IRS made trust fund recovery penalty (TFRP) assessments and, if not made, indicate reason that assertion of the penalty would not be a suitable means of collecting. If the IRS made a TFRP assessment, state the facts and circumstances giving rise to the assessment and the collection status of the assessment. Also, discuss why the RO believes the responsible person is deemed to have willfully failed to pay over the tax.
  - (13) **Witnesses:** Give the names of witnesses, present addresses, and titles or other identification, as appropriate. Discuss any evidence the witnesses have already given or may be expected to give.
  - (14) **Case Weaknesses:** Discuss any weaknesses in the evidence or unreliability of witnesses. Discuss any evidence to controvert possible weaknesses, if available, including efforts made to verify assertions of the taxpayer or other party involved. Also discuss contentions of the taxpayer and third parties.
  - (15) **Property and Property Value:** Discussion and description of the property and any claimants where the case will result in the sale of assets subject to a tax lien. Discussion includes amounts for fair market value, forced sale value, and estimated amount of recovery along with the basis for these values. Discussion includes the strengths and weaknesses of other claims against the property along with any other property descriptions or other information regarding the property with relevance to the case. If the recommendation includes the appointment of a receiver, set forth the factors warranting this action.
- Note:** See IRM 5.17.4.10.1(1), Types of Court Appointed Receivers, at **b.** regarding certification from Division Counsel (SB/SE).
- (16) **Taxpayer Representative:** Provide the name and address of the taxpayer's representative. Provide the names of representatives of any competing lienors, claimants or other parties when available. When appropriate, this may be done by reference to Form 4480, Civil Suit Service of Legal Papers.
  - (17) **Chronological presentation:** All relevant facts, including actions by the taxpayer, the IRS, and third parties, with references to exhibits where appropriate.

5.17.12.20.2.2.1  
(11-09-2023)

**Additional Items for  
Failure to Honor Levy**

- (1) The Body section of a narrative report, to support the recommendation, should include:
  - a. Name and address of person failing to honor notice of levy,
  - b. Reason levy not honored (an effort should be made to determine the reason, since the party may be justified in not honoring the levy including whether or not the debt is in dispute),
  - c. Date Form 668–A, Notice of Levy, was served, and proof of service (e.g. by personal service, certified mail, or fax acknowledgement if party has agreed to accept service by fax),

- d. Date Form 668–C, Final Demand for Payment, was served, and proof of service (i.e. service of the final demand is by certified mail or personal delivery),
- e. Dates the party served was contacted to request payment and the manner of contact,
- f. Description of property or rights to property subject to levy,
- g. Whether collection of tax can be made from other sources (normally, if the tax can be collected by other means, suit should not be recommended), and
- h. Whether the 50-percent penalty is proposed, and the basis for the recommendation. (See IRM 5.17.4.12.3(2) and IRM 5.17.4.12.3(3), Liability for Failure to Comply).

**Reminder:** An example can be found on the *Knowledge Management Suit Forms Page* under **Related Forms and Documents** click either option located there to open the page *Suits - Resources/Examples*. On that page is the example: *Example Failure to Honor Levy*.

5.17.12.20.2.2.2  
(11-09-2023)

**Additional Items for  
Setting Fraudulent  
Transfer Aside Based on  
Constructive Fraud**

- (1) The Body section of a narrative report, to support a recommendation, should include:

Item	Description
1	Whether administrative procedures under IRC 6901 can be used (administrative procedures are less costly and should be used whenever possible instead of recommending suit), see IRM 5.17.14, Fraudulent Transfers and Transferee and Other Third Party Liability.
2	Name and address of transferee.
3	Description of property (use Form 4479, Property, Liens, and Claims).
4	Whether transferor was insolvent at time of transfer or immediately thereafter; also furnish financial statement, if possible.
5	Evidence that transfer was made to hinder, delay, or defeat payment of tax.
6	Date property acquired by transferee.
7	How acquired by transferee.
8	Consideration given by transferee (if none, so state).
9	Fair market value on date acquired by transferee.
10	Basis for determining fair market value.
11	Relationship between transferor and transferee.
12	Date tax liability of transferor assessed (if the tax was not assessed before the transfer, information should be furnished to show that parties involved were aware that assessments were being proposed or in process of being made).
13	Actions taken to collect tax from transferor.

**Example:** *Example Constructive Fraud - Set Aside Transfer found on, Suits - Resources/Examples.*

5.17.12.20.2.2.3  
(11-09-2023)

**Additional Items for  
Recovering Erroneous  
Refunds**

- (1) **Suit to recover an erroneous refund:** The body section of a narrative report, to support a recommendation, should include:
- The type of tax and the period(s) involved,
  - The amount of the erroneous refund,
  - Date return was filed and date erroneous refund was made,
  - Administrative efforts to collect the erroneous refund,
  - Computation of the statute of limitations for filing suit to collect, and
  - A description of the events that resulted in the erroneous refund.

**Reminder:** An example can be found on the *Knowledge Management Suit Forms Page* under **Other Related Resources** click either option located there to open the page *Suits - Resources/Examples*. On that page is the example: *Example Recover Erroneous Refund*.

5.17.12.20.2.2.4  
(11-09-2023)

**Additional Items for Lien  
Foreclosure of  
Taxpayer's Principal  
Residence**

- (1) **Definition:**
- For the **personal residence** of any person is found in IRM 5.10.2-1, Asset Type and Approving Official: IRM Reference 5.10.2.1, Real Property, Row 2, and
  - For the **taxpayer's principal residence** as found in IRM 5.10.2-1, Asset Type and Approving Official: IRM Reference 5.10.2.1, Real Property, Row 1.
- (2) The Body section of a narrative report supporting the recommendation to foreclosure on a **taxpayer's principal residence**, must contain:
- Date and result of contact or attempted contact with the taxpayer to advise them that foreclosure of the principal residence is the next planned action.
  - Information on: (1) whether the taxpayer resides in the residence, (2) the occupants of the principal residence including children (provide the name(s), relationship(s) to the taxpayer, brief history (age, health, etc.)), and, (3) current mailing address of the occupant(s) if it differs from the address of the property being foreclosed (provide these names and address on Form 4480 as well).
  - A summary of the administrative remedies considered, discussed, and / or used; this includes taxpayer's potential to submit an Offer in Compromise (including an Effective Tax Administration offer or, an offer with consideration of special circumstances). If the information is unavailable explain why it is unavailable.

**Note:** Do not consider a levy to be unavailable simply because judicial approval is required; see IRM 5.17.4.8.2.5(2), Lien Foreclosure on a Principal Residence, stating that a suit to foreclose the tax lien is the secondary alternative used only when the seizure remedy is not the optimal solution, and, moreover, while it is not explicitly stated, such a suit recommendation would carry the same considerations as the seizure remedy.

- d. A statement in both the ICS history and narrative report discussing whether the action proposed would result in an inability to secure future housing or otherwise lead to an economic hardship. Base this on all available information obtained while working with the taxpayer. This would include any health issues experienced by the taxpayer or others impacting acquisition, by the taxpayer, of future housing. Otherwise, include the reason sufficient data does not exist to provide this analysis.
  - e. Results of advising the taxpayer about Taxpayer Advocate Service (TAS) and providing Form 911, Request for Taxpayer Advocate Service Assistance (And Application for Taxpayer Assistance Order). Include whether the taxpayer claimed hardship and whether the taxpayer contacted TAS, and any results of TAS involvement.
- (3) See also IRM 5.17.4.8.2.5(3), Lien Foreclosure on a Principal Residence.
- (4) For information on seizure of a taxpayer's principal residence see IRM 5.17.4.9, Proceeding to Seize a Principal Residence.

**Reminder:** An example can be found on the *Knowledge Management Suit Forms Page* under **Other Related Resources** click either option located there to open the page *Suits - Resources/Examples*. On that page is the example: *Example Principal Residence Foreclosure with Judgment and 2nd Property*.

5.17.12.20.2.2.5  
(11-09-2023)

**Additional Items for  
Establishing a  
Transferee Liability**

- (1) The Body section of a narrative report, to support a recommendation, should include:

***Items to Include***

Item	Description
1	The name(s) and address of transferee(s). List the name(s) in the - (1) additional items section first paragraph, (2) narrative pre-introduction section under Third Parties, and (3) on Form 4480.
2	Description of the relationship between transferor(s) and transferee(s). See IRM 5.17.14.2(2).
3	An identification and general description of the property. For details and legal description use Form 4479 Property Description - Civil Suit.
4	Identification of and the date(s) property acquired by transferee(s) - and - discuss whether the transferor(s) remain(s) liable for the tax or the transfer occurred in the year of liability. See IRM 5.17.14.2(4), IRM 5.17.14.3.3, and IRM 5.17.14.5.5.
5	Identification of and the date(s) tax liability of transferor(s) assessed. If the tax was not assessed before the transfer, furnish information showing that the parties involved were aware that assessments were being proposed or in process of being made. See IRM 5.17.14.3(1), IRM 5.17.14.3.3.2.2.1, and IRM 5.17.14.3.3.2.2.2.
6	Identification and description of any consideration given by transferee(s). If none provided, so state. See IRM 5.17.14.3.3.2.2.

Item	Description
7	Identification and amount of the fair market value on the date acquired by transferee(s), whether the value has increased or decreased since the transferee(s) acquired, and discuss and furnish in exhibits the basis for determining fair market value. See IRM 5.17.14.2(4), IRM 5.17.14.3.3.2.2.1, and IRM 5.17.14.3.3.2.2.
8	If possible, discuss and attach as exhibits substantiating financial statements that document the transfer(s) and whether making the transfer(s) hindered, delayed, or defeated payment of tax. See IRM 5.17.14.3.3.2.2.1, and IRM 5.17.14.3.3.2.2.2.
9	A description of the actions taken to collect tax from transferor(s). See IRM 5.17.14.3.2, IRM 5.17.14.5.5(5). Also include a statement on why IRC 6901 is unavailable or unavailing. See IRM 5.17.14.2(4), IRM 5.17.14.5.2, IRM 5.17.14.5.2.1, and IRM 5.17.14.5.3.
10	A discussion on how the transferee(s) acquired the property. and whether the Transfer Type was Direct or Indirect. See IRM 5.17.14.3.1.
11	Describe how or why the transferee liability arose and discuss the details of the transfers (IRM 5.17.14.3.3, Establishing Transferee Liability).

- (2) There are different types of transferee liabilities. The Discussion Points table below outlines the criterion.

#### **Discussion Points**

Type	Description	Discussion Points
<b>Transferee(s) At Law</b>	Transferee falls within IRC 6324(a)(2), IRC 6324(b) distributee / recipient/ donee from a decedent's estate, bulk sale, corporate (or de facto) merger/ consolidation/ dissolution, contract accepting liability.	Discuss whether the liability occurred through a contract where the transferee expressly / impliedly accepted responsibility for the liability, or whether the liability imposed by federal / state law. See IRM 5.17.14.3.3(3), table item 3.
<b>Transferee(s) In Equity</b>	A fraudulent transfer occurred.	Discuss the value of the property at the time of transfer, whether the transferor was insolvent or made insolvent by the transfer. See IRM 5.17.14.3.3(5), table items 4 and 5.

- (3) An example can be found on the *Knowledge Management Suit Forms Page* under **Other Related Resources** click either option located there to open the page *Suits - Resources/Examples*. On that page is the example: *Example Transferee Liability (Estate Beneficiary) plus Assertion -v- Fiduciary*.

5.17.12.20.2.2.6  
(11-09-2023)

#### **Additional Items for a Repatriation Order**

- (1) **Definition:** A Repatriation Order is an order issued by a federal judge, after a hearing, requiring a taxpayer who has either transferred assets from the U.S. to a foreign country or acquired assets in a foreign country to transfer them back into the United States.

**Note:** For details about Repatriation Orders, see IRM 5.21.3.7, Collection Tools for International Cases, Suit to Repatriate Property - Repatriation Orders. Also, discuss with Area Counsel and CEASO Advisory prior to this type of referral.



**Reminder:** These types of suits are generally in conjunction with a suit to reduce assessments to judgment and can be followed by a Writ Ne Exeat Republica if appropriate (see IRM 5.21.3.4, Collection Tools for International Cases, Writ Ne Exeat Republica).

(2) The body section of a narrative report, to support the recommendation, should include:

- a. Nature, value, and location of foreign property,
- b. Explanation providing background on how assets located in a foreign country,

**Note:** Attach as exhibits any documentation associated with this determination.

- c. Statement defining how the U.S. can get personal jurisdiction over the taxpayer. The RO must show that the taxpayer is either in the U.S. or a U.S. Territory or the likelihood that the taxpayer will be returning to, or passing through, the United States,
- d. Results of consideration of Exchange of Information (EOI) request. (See IRM 5.21.2.4, Offshore Information Gathering Techniques, Exchange of Information).
- e. Results of exhausting collection against any domestic assets,
- f. Results of levy on the domestic bank branch of a foreign banking institution if the property is held in a United States branch, and levy enforced when recommended by Counsel, and
- g. Whether the U.S. has a Mutual Collection Assistance Request (MCAR) arrangement with the applicable country (See IRM 5.21.7.4, International and Insular Issues Special Cases, Mutual Collection Assistance Requests (MCAR)).

(3) An example can be found on the *Knowledge Management Suit Forms Page* under **Other Related Resources** click either option located there to open the page *Suits - Resources/Examples*.

5.17.12.20.2.3  
(03-30-2015)  
**Narrative -  
CONCLUSION and  
RECOMMENDATION**

(1) Provide a brief analysis of the case, including any theories or principles which support the recommendation in the conclusions and recommendation portion of the report.

5.17.12.21  
(11-09-2023)  
**Suit for Damages for  
Failure to Release Lien,  
for Unauthorized  
Collection Actions, or  
for Actions in Violation  
of the Automatic Stay  
and Discharge  
Provisions of the  
Bankruptcy Code, IRC  
7426(h), 7432, and 7433**

(1) These suits are not initiated by the IRS. However, it may be necessary to prepare a report to assist with the defense of the IRS's position when they are brought by taxpayers or in the case of a third party brought under IRC 7426(h). Such reports must address and document the following:

- a. Date administrative claim for damages was filed, and office where claim was filed.
- b. Amount of damages claimed.
- c. Name of taxpayer or third party making claim.
- d. Description of collection activity upon which the claim is based.
- e. Information concerning administrative review of the claim by the IRS.
- f. If applicable, date on which request for certificate of release of lien was received, or date on which claimant alleges that lien became fully satisfied or unenforceable.

- g. Description of the damages claimed.
- h. Statement as to whether you believe that suit was commenced within the 2-year statute of limitations period.
- i. Statement as to whether the claimant could have mitigated the damages claimed.

**Note:** See Pub 5390, Instructions for Preparing Administrative Claims for Damages Under Sections 7426(h), 7432, and 7433(a-d), and Request for Costs under Section 7430 Related to these Sections, for information on claims submissions under IRC 7426(h), IRC 7432, and IRC 7433(a-d). For information on claims under IRC 7433(e), see *Claims for Relief and Damages for Violations of Bankruptcy Automatic Stay or Discharge Injunction*,

- (2) See IRM 25.3.3, Suits Against the United States and Claims for Damages under IRC 7433, IRC 7345, IRC 7426(h), and IRM 5.12.3.13, Civil Cause of Action Under IRC 7432 for Failure to Release Lien, for additional information.