



MANUAL TRANSMITTAL

Department of the Treasury
Internal Revenue Service

9.5.2

FEBRUARY 7, 2024

EFFECTIVE DATE

(02-07-2024)

PURPOSE

- (1) This transmits revised IRM 9.5.2, Grand Jury Investigations.

MATERIAL CHANGES

- (1) Added Internal Controls to be compliant with IRM 1.1.2.2.4, Address Management and Internal Controls and IRM 1.4.2, Resource Guide for Managers, Monitoring and Improving Internal Control.
- (2) Section 9.5.2.3 added “The CI Unified Checklist contains forms needed for IRS initiated requests and requests initiated by an attorney for the government.”
- (3) Section 9.5.2.4.1(5) reworded paragraph to state “Form 9510, Grand Jury Access List (Collateral), will be included with all grand jury collateral requests that contain or will result in grand jury information. The SSA in the field office that initiates the grand jury collateral request may delegate the responsibility of issuing and maintaining the grand jury access list, Forms 9510, to an (SA) assigned to the grand jury investigation, but must ensure that all personnel who have access to grand jury information are listed on each Form 9510 are added to the Grand Jury Access List. The SAC of the field office that receives a grand jury collateral request will ensure the names and titles of all personnel in the field office having access to the grand jury information will sign Form 9510 are included in the reply. The SAC may delegate this responsibility to the SSA.”
- (4) Section 9.5.2.5 reworded to state “While assisting the attorney for the government, neither SAs nor cooperating IRS personnel may solicit or seek information other than for criminal purposes.”
- (5) Section 9.5.2.5.1(2) removed the second sentence “However, they may issue Form 2725, Document Receipt, when securing documents pursuant to a grand jury subpoena.”
- (6) Section 9.5.2.5.5 added “includes the name and title of all personnel with access to the grand jury information”.
- (7) Section 9.5.2.6.3(1) removed IRM references “per the IRM (subsections 4.8.2.10.3.6(2), 4.8.2.10.3.6(3), 25.1.4.3.10(1)a, and 25.1.5.2(2))”.
- (8) Section 9.5.2.6.3(2) and 9.5.2.6.3(5) updated policy statement reference from P-4-84 to P-4-26.
- (9) Additional revisions deletions, grammatical changes were made throughout the section which did not result in substantive changes but contributed to procedural clarity.

EFFECT ON OTHER DOCUMENTS

This IRM supersedes IRM 9.5.2 dated September 22, 2015.

AUDIENCE

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9.5.2

Grand Jury Investigations

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9.5.2.1
(02-07-2024)
Program Scope and Objectives

- (1) Special agents are authorized to assist the attorney for the government in conducting investigations, preparing for indictment and trial, and obtaining evidence relative to sentencing in matters involving potential violations of Title 26, Title 18, and/or Title 31 of the United States Code committed in contravention of tax, bank secrecy, or money laundering statutes. An attorney for the government or Strike Force Attorney may request special agents to assist in such investigations by a Federal grand jury, or to make presentations to a Federal grand jury. Also, the IRS or an attorney for the government may initiate a request for a grand jury investigation.
- (2) Audience: All IRS employees.
- (3) Policy Owner: Director, Global Financial Crimes & Policy.
- (4) Program Owner: Director, Global Financial Crimes & Policy.
- (5) Primary Stakeholders: An attorney for the government, such as an Assistant United States Attorney (AUSA) or Strike Force Attorney.
- (6) Contact Information: To make changes or make suggestions to this IRM section, contact the Financial Crimes office by emailing CIHQIRM@ci.irs.gov.
- (7) Goal: To provide the guidelines and procedures for Criminal Investigation (CI) special agents and managers to follow in working grand jury cases.

9.5.2.1.1
(02-07-2024)
Background

- (1) The IRS may request the use of a grand jury either before, during, or after conducting an administrative investigation.

9.5.2.1.2
(02-07-2024)
Authority

- (1) See IRM 9.1.2, Authority for the delegated authority relating to 9.5.2, Grand Jury Investigations.

9.5.2.1.3
(02-07-2024)
Roles and Responsibilities

- (1) The Director, Global Financial Crimes & Policy is responsible for developing, maintaining, and overseeing this IRM and ensuring compliance with current policies and procedures.

9.5.2.1.4
(02-07-2024)
Program Management and Review

- (1) The Director, Global Financial Crimes & Policy:
 - a. Review the IRM annually.
 - b. Update the IRM when content is no longer accurate and reliable to ensure employees correctly complete their work assignments and for consistent administration of the tax laws.
 - c. Incorporate all permanent interim content into the next version of the IRM section prior to the expiration date.

9.5.2.1.5
(02-07-2024)
Program Controls

- (1) The Director, Global Financial Crimes & Policy will review the instructions and guidelines relating to the investigation of tax returns and other IRS documents for procedural, operational, and editorial changes.

9.5.2.1.6
(02-07-2024)
Acronyms

- (1) The following table lists the terms and acronyms used throughout this IRM section and their definitions:

| Acronym | Definition |
|---------|--|
| AUSA | Assistant United States Attorney |
| CEM | Criminal Evaluation Memorandum |
| CI | Criminal Investigations |
| CIMIS | Criminal Investigation Management Information System |
| CT | Criminal Tax |
| DOJ | Department of Justice |
| FRCP | Federal Rule of Civil Procedure |
| OCDETF | Organized Crime and Drug Enforcement Task Force |
| SA | Special Agent |
| SAC | Special Agent in Charge |
| SSA | Supervisory Special Agent |
| TIGTA | Treasury Inspector General for Tax Administration |
| TIN | Taxpayer Identification Number |
| USCS | United States Code Services |

9.5.2.1.7
(02-07-2024)
Related Resources

- (1) Delegation Order No. 9-6.
- (2) Department of the Treasury General Counsel Order No. 4.
- (3) Department of the Treasury Order No. 150–35.
- (4) Form 9131, Request for Grand Jury Investigation.
- (5) IRM 9.3.1, Disclosure.
- (6) IRM 9.4.1, Investigation Initiation.
- (7) IRM 9.4.7, Consensual Monitoring.
- (8) IRM 9.4.9, Search Warrants, Evidence, and Chain of Custody.
- (9) IRM 9.5.1, Administrative Investigations and General Investigation Procedures.
- (10) IRM 9.5.12, Processing Completed Criminal Investigation Reports.
- (11) IRM 9.11.2, Domestic and Foreign Travel.
- (12) IRM 10.2, Physical Security Program.
- (13) Tax Division Directive No. 86–59.

- (14) United States Code Services (USCS) Federal Rule of Civil Procedure (FRCP) R-45, Subpoena, and R-17, Subpoena.

9.5.2.2
(11-05-2004)
**Initiation of Grand Jury
Investigations**

- (1) The IRS may request the use of a grand jury either before, during, or after conducting an administrative investigation. A grand jury may normally be requested whenever:
 - a. Using a grand jury would be more efficient, e.g., the administrative process cannot develop the relevant facts within a reasonable period of time.
 - b. An investigation has proceeded as far as the administrative process allows, but prosecution potential would be strengthened by the grand jury process.
- (2) An attorney for the government, such as an Assistant United States Attorney (AUSA), may ask for Criminal Investigation's (CI) assistance in an ongoing or proposed grand jury investigation whenever the information available to the attorney indicates possible commission of crimes under the jurisdiction of the IRS.

9.5.2.3
(02-07-2024)
**Procedures Incident to
Grand Jury Requests**

- (1) The following procedures should be used for grand jury requests. The CI Unified Checklist contains forms needed for IRS initiated requests and requests initiated by an attorney for the government.

9.5.2.3.1
(02-07-2024)
**Grand Jury Requests
Involving Potential Tax
and Tax Related
Violations**

- (1) In both IRS initiated requests and requests initiated by an attorney for the government, the special agent (SA) must prepare Form 9131, Request for Grand Jury Investigation. Criminal Tax (CT) Counsel reviews the Form 9131 and the accompanying exhibits and prepares a Criminal Evaluation Memorandum (CEM) to the Special Agent in Charge (SAC) recommending action. Form 9131 must be signed by the SAC. For sensitive investigations, as defined in IRM 9.4.1, Investigation Initiation, the written concurrence of the Chief, Criminal Investigation must be obtained.
- (2) If this request contains any information governed by the grand jury secrecy provisions, the SA must stamp or print on the top right hand corner of Form 9131 the phrase: "Caution: This document contains secret grand jury information." The SA will also place a cover sheet over the request which states: "This report contains secret grand jury information."

9.5.2.3.1.1
(11-05-2004)
**Service Initiated
Requests**

- (1) Internal Revenue Service initiated requests should include:
 - a. Identification of the probable criminal matters, including contemplated charges, tax returns at issue, identification of individuals involved, and indications of wrongdoing which support the contemplated charges.
 - b. Identification of potential witnesses, and recommendations as to the testimonial and documentary evidence to be sought before the grand jury.
 - c. A summary of the investigation to date, including all investigative steps taken, all evidence developed (including witnesses contacted and their testimony), and all summonses issued but not yet complied with (including the status of summons enforcement activities).
 - d. A summary of any existing or prospective civil actions against the subject(s).

- e. The reason(s) why a grand jury investigation is being requested (e.g., the need for quick action rather than the administrative process; the need for subpoenas rather than administrative summonses; any other relevant factors).
- f. The importance of the anticipated prosecution(s) to compliance.

- (2) Completed requests and supporting documents will be forwarded as specified in subsection 9.5.2.3.1.5 below.

9.5.2.3.1.2
(11-05-2004)

**Government Attorney
Initiated Requests**

- (1) Government attorney-initiated requests for grand jury assistance should be submitted in writing to the SAC and include:
 - a. Name and taxpayer identification number (TIN) of the subject(s),
 - b. Names of other law enforcement agencies involved in the investigation,
 - c. Any non-tax violations,
 - d. Years involved,
 - e. Probable tax violations.
- (2) If the request includes grand jury information, it should specifically authorize the disclosure of grand jury material to IRS personnel in accordance with USCS Fed Rules Crim Proc R 6(e). The authorization should include disclosure of information necessary to evaluate the request. The existence of grand jury information automatically qualifies the requests as a grand jury expansion request. (See subsection 9.5.2.3.3).
- (3) The request should include a statement indicating if there is an “ongoing” grand jury investigation.

Note: In order to meet the criteria for a direct referral of a grand jury request to the attorney for the government, subpoenas must have been served and/or some evidence must have been presented to the grand jury.

9.5.2.3.1.3
(11-05-2004)

**Special Agent in
Charge’s Review of
Government Attorney
Initiated Requests**

- (1) The SAC or a designee, will review and analyze all financial and other relevant information to determine criminal prosecution potential within IRS jurisdiction.
- (2) If the SAC believes that CI should participate in the grand jury investigation, the SAC or a designee will advise the attorney for the government of the IRS procedure for approving the request, and will assign a SA to prepare Form 9131, Request for Grand Jury Investigation.
- (3) Criminal Tax Counsel reviews the Form 9131 and the accompanying documents/exhibits and prepares a CEM to the SAC recommending action.
- (4) If the SAC believes that CI should not participate in the grand jury investigation, the SAC will advise the attorney for the government in writing, stating the reasons for not participating, and will return all grand jury materials together with a list of all IRS personnel who had access to these materials.
- (5) If the attorney for the government’s request is to expand an ongoing non-tax grand jury to include tax and/or tax related violations, then grand jury expansion procedures are followed. (See subsection 9.5.2.3.3).

9.5.2.3.1.4
(11-05-2004)
**Procedures to be
Followed if a Grand Jury
Request is Declined by
the Department of
Justice**

- (1) When the Department of Justice (DOJ) decides not to approve a request to initiate a grand jury investigation of potential tax violations and/or tax related violations, and the request does not contain grand jury information, the IRS may conduct an administrative investigation.

9.5.2.3.1.5
(06-24-2014)
**Routing of Grand Jury
Requests**

- (1) All grand jury requests involving potential tax and/or tax related violations must be approved by the supervisory special agent (SSA) and reviewed by CT Counsel. CT prepares a CEM to the SAC recommending action. The grand jury request must then be approved by the SAC. If the grand jury request relates to a sensitive investigation, as defined in IRM 9.4.1, Investigation Initiation, the written concurrence of the Chief, Criminal Investigation must be obtained.
- (2) Time allotted for the review of grand jury requests that are IRS initiated:
 - a. CT Counsel - 20 workdays of receipt,
 - b. Director, Field Operations (when applicable) - five workdays of receipt.
- (3) Time allotted for the review of grand jury requests that are government attorney initiated:
 - a. CT Counsel - ten workdays of receipt,
 - b. Director, Field Operations (when applicable) - five workdays of receipt.
- (4) IRS initiated grand jury requests and government attorney (other than ongoing non-tax grand jury expansions (see subsection 9.5.2.3.3) initiated grand jury requests involving potential tax and/or tax related violations, will be routed by the SAC to the DOJ, Tax Division. For United States Attorney initiated grand jury requests, the SAC also forwards copies of the transmittal to the government attorney, the SSA, Area Counsel, and the CT attorney who reviewed it. For IRS initiated grand jury requests, the SAC also forwards copies of the transmittal to the SSA, Area Counsel, and the CT attorney who reviewed the request. When DOJ Tax Division approval is received, a copy is sent to the government attorney with all exhibits and a copy of the CEM from CT Counsel.
- (5) Organized Crime and Drug Enforcement Task Force (OCDETF), Form 8300 violations and government attorney requests involving ongoing non-tax grand juries (see subsection 9.5.2.3.3) investigations will be a direct referral from the SAC to the government attorney. The SAC will send copies of the request, the referral, Form 9131 with exhibits, access list, and CT counsel evaluation by certified mail to Tax Division. The SAC will forward a copy of the referral letter to the SSA, the Area Counsel, and to the CT attorney who reviewed the request.

Note: The approval of the DOJ, Tax Division, must be obtained before issuing of an information or seeking the return of an indictment on tax and/or tax related matters.

- (6) In certain circumstances grand jury authorization for violations of 18 USC §287 and §286, can be directly referred to the attorney for the government. See DOJ, Tax Division Directive No 96. Criminal Tax Counsel should be consulted.

9.5.2.3.2
(06-24-2014)
**Non-Tax Grand Jury
Requests**

- (1) The SAC has the authority to directly refer matters involving 18 USC §1956 and §1957 and Title 31 to the attorney for the government, pursuant to IRS Delegation Order No. 9-2 (as revised). If the matter relates to a sensitive investigation, as defined in IRM 9.4.1, Investigation Initiation, the written concurrence of the Chief, Criminal Investigation must be obtained prior to referral.
- (2) The procedures to follow for a non-tax related Title 18 and/or Title 31 grand jury request are as follows:
 - a. An IRS initiated request for a Title 18 and/or Title 31 (non-tax) grand jury investigation will be made by letter from the SAC to the attorney for the government. (This excludes a request for violation of 18 USC §1956(a)(1)(A)(ii) which is tax related, and for which the above procedures in subsection 9.5.2.3.1 et seq. must be followed).
 - b. The SAC will respond by letter to an attorney for the government seeking IRS participation in a Title 18 and/or Title 31 (non-tax) grand jury investigation.
 - c. This letter should specify the name and TIN of each subject, other investigating law enforcement agencies, types of non-tax charges involved, and years involved.
 - d. All correspondence with the attorney for the government will be placed in the administrative investigative file.
- (3) If this request contains any information governed by the grand jury secrecy provisions, the SA must stamp or print on the top right hand corner of the letter the phrase: "Caution: This document contains secret grand jury information." The SA will also place a cover sheet over the request which states: "This report contains secret grand jury information."
- (4) Potential violations of Title 26 by persons outside of a Title 18 and/or Title 31 grand jury investigation, discovered during a "pure" (non-tax) Title 18 and/or Title 31 investigation, must be segregated and investigated independently of the Title 18 and/or Title 31 grand jury investigation.

Note: If the Title 26 evidence is so interrelated to the Title 18 and/or Title 31 investigation, then the attorney for the government must seek an expansion request in accordance with subsection 9.5.2.3.3 below.

- (5) Delegation Order No. 25-5 authorizes the SAC to initiate Title 31 investigations of financial institutions other than banks and brokers or dealers in securities; (and the Chief, CI, to approve Title 31 subject investigations of banks and brokers or dealers in securities), so that CI may either initiate or agree to participate in such a criminal investigation.

9.5.2.3.3
(06-24-2014)
**Grand Jury Expansion
Requests**

- (1) In order to expand an existing tax and/or tax related grand jury investigation to include additional subject(s), tax period(s) or type(s) of tax, the attorney for the government must obtain DOJ, Tax Division approval.
- (2) Department of Justice, Tax Division, Directive 86-59 permits the attorney for the government to expand an existing non-tax grand jury to include Title 26 offenses, (except where the grand jury proceedings involve a multi-jurisdictional investigation or involve targets considered to have national prominence, such as public officials, political candidates, members of the judiciary, religious or labor leaders, news media representatives, and major

corporations and/or their officers). In order to meet the criteria for a direct referral of a grand jury request to the attorney for the government, subpoenas must have been served and/or some evidence must have been presented to the grand jury.

- (3) Pursuant to Directive 86-59, the attorney for the government may designate the subject(s), scope of the inquiry, and the tax period(s) to be investigated. However, the approval of the DOJ, Tax Division, must be obtained before the issuing of an information or seeking the return of an indictment on tax and tax related matters.
- (4) An attorney for the government seeking an expansion of either an existing tax, tax related or non-tax grand jury investigation should make a request in writing to the SAC. (See subsection 9.5.2.3.1.2).
- (5) The SAC will place the written request from the attorney for the government in the administrative file and route a copy to a SSA for assignment to a SA.
- (6) The special agent will then update Criminal Investigation Management Information System (CIMIS) and prepare a Form 9131, Request for Grand Jury Investigation, for the expansion request. In lieu of preparing the Form 9131, the expansion request can be transmitted with a SA's prosecution report.

Note: If the expansion request involves subjects in other field offices, the SAC, through the Director(s), Field Operations, must secure the concurrence of the appropriate SAC(s).

- (7) Under exigent circumstances, expansion requests may be approved by DOJ, Tax Division by telephone. However, written requests must already have been approved by the SAC before this procedure can be used.
- (8) Within five workdays of a telephonic approval, the SAC will forward the written request to the approving DOJ, Tax Division official, together with the expansion memorandum containing an explanation of the exigent circumstances which warranted the telephonic procedure.

Note: Exhibit 9.5.2-2, Grand Jury Approval Process, lists the approval processes for grand jury investigations.

9.5.2.4
(11-05-2004)
Grand Jury Secrecy

- (1) The USCS FRCP R6(e) prohibits the disclosure of grand jury material or information, except as specifically authorized in subparagraph (3). The procedures listed in this section are designed to ensure that this Rule is not violated.

9.5.2.4.1
(02-07-2024)
Grand Jury Access List

- (1) A list of all IRS employees who are expected to have access to grand jury information (including CT Counsel) will be attached as an exhibit to Form 9131, Request for Grand Jury Investigation. The list will be titled "Grand Jury Access List", and will include the following statement immediately before the employee listing: "The following list contains the names and positions of all employees who have access to the grand jury information". The list will include the Chief, CI; Deputy Chief, CI; and Director, Operations Policy and Support.
- (2) Thereafter, all persons who have access to the grand jury information, including telephonic access, must be made aware of the grand jury secrecy rules and must have their names added to the Grand Jury Access List.

- (3) The employees listed on the initial Grand Jury Access List need not sign the list in order to have access to grand jury information. The SAC and Director, Field Operations will ensure that all employees under their control who have access to grand jury information are familiar with grand jury secrecy rules.
- (4) The SSA may delegate the responsibility of maintaining the Grand Jury Access List to a special agent assigned to the grand jury investigation, but must ensure that the list is maintained timely and accurately. The SSA will provide the list to the attorney for the government.
- (5) Form 9510, Grand Jury Access List (Collateral), will be included with all grand jury collateral requests that contain or will result in grand jury information. The SSA in the field office that initiates the grand jury collateral request may delegate the responsibility of issuing and maintaining the grand jury access list, Forms 9510, to an SA assigned to the grand jury investigation, but must ensure that all personnel who have access to grand jury information are listed on each Form 9510 are added to the Grand Jury Access List. The SAC of the field office that receives a grand jury collateral request will ensure the names and titles of all personnel in the field office having access to the grand jury information will sign Form 9510 are included in the reply. The SAC may delegate this responsibility to the SSA.

9.5.2.4.2

(11-05-2004)

**Access to Grand Jury
Material by the Treasury
Inspector General For
Tax Administration**

- (1) When the Treasury Inspector General for Tax Administration (TIGTA) makes a request involving a matter investigated by a grand jury, CI will immediately allow them to review all information obtained prior to the grand jury referral and all information obtained during the investigation which are not matters occurring before the grand jury. Exhibit 9.5.2-1 contains listings of items that are generally classified as grand jury materials and non-grand jury materials. Criminal Investigation may consult CT Counsel if there is a question about classifying the information.
- (2) Criminal Investigation will advise TIGTA if full disclosure cannot be made of all items in the file because certain items fall within the scope of Rule 6(e). Criminal Investigation will describe in general terms the nature of the items (e.g., a transcript of testimony).

| If | Then |
|---|--|
| TIGTA believes that the items are not covered by Rule 6(e) and should be released | TIGTA will make a specific request to CI that is limited to the items important to completing the audit. |
| CI still believes information cannot be released | The Director, Field Operations will review the request and attempt to resolve the disagreement |
| the Director, Field Operations cannot resolve it | CT Counsel for the field office will assist in resolving the matter, and may coordinate the issue with the US Attorney's Office, and Division Counsel/Associate Chief Counsel (Criminal Tax) |
| the matter is still unresolved | Division Counsel/Associate Chief Counsel (Criminal Tax), may refer the matter to the DOJ for final resolution. |

9.5.2.4.3

(11-05-2004)

**Civil or Non-Grand Jury
Use of Grand Jury
Material**

- (1) Grand jury information may not be used for civil purposes unless the IRS obtains the information independently of the grand jury or through a Rule 6(e) order.
- (2) To prevent doubt about the origins of information available for civil use, the SSA should ensure the segregation of information prior to the receipt of any grand jury information and have such material clearly marked as non-grand jury. After the grand jury investigation begins, any information obtained independently of the grand jury should be kept separate and clearly identified as an independent source. The Grand Jury Guidelines included in Exhibit 9.5.2-1 may be used in the classification of information.
- (3) Field personnel should consult CT Counsel when questions arise in the segregation process. The ultimate decision, however, to release evidence acquired during a grand jury investigation falls within the purview of the attorney for the government. Information deemed to be non-grand jury in nature should not be released unless the responsible DOJ attorney reviews the material and they authorize the release. The government attorney's approval should be documented in the respective case file.
- (4) In general, IRS personnel who have received grand jury information subject to the secrecy provisions of Rule 6(e) will exclude themselves from involvement in non-grand jury matters concerning the individuals, entities, and subject matter of the grand jury information.
- (5) The SAC and other CI managers may not use grand jury information to direct a non-grand jury investigation.

9.5.2.5

(02-07-2024)

**Investigative Techniques
Peculiar To Grand Jury
Investigations**

- (1) While assisting the attorney for the government, neither SAs nor cooperating IRS personnel may solicit or seek information other than for criminal purposes.
- (2) Requirements for the security of grand jury information are set forth in IRM 10.2, Physical Security Program.
- (3) Some of the unique aspects to CI techniques peculiar to grand jury investigations are listed in the following subsections.

9.5.2.5.1

(02-07-2024)

Subpoenas

- (1) A *subpoena* is a writ issued by the authority of the court ordering an individual to appear at a specified date, time, and place to testify or to give evidence, or both, in a matter pending before the court. *Subpoena Duces Tecum* is a command to a witness to testify and to produce at a trial, a deposition, or a hearing, documents or papers in his possession that are pertinent to the issues of a pending case. (See USCS FRCP R45 and R17.)
- (2) IRS employees may not use Form 2039, Summons, under any circumstances in grand jury investigations.
- (3) A subpoena may be issued for grand jury investigative purposes and trial proceedings.

9.5.2.5.1.1
(11-05-2004)

**Preparing And Serving
Subpoenas**

- (1) At the request of a government attorney, an SA may assist with the preparation and service of subpoenas for witness testimony and with the production of books, papers, documents, or objects. The following suggestions may aid the SA in assisting the attorney for the government:
 - a. Review the subpoena for accuracy and content.
 - b. Prepare and serve the subpoena as promptly as possible.
 - c. Complete the Return of Service section, the Statement of Service Fees section, and the Declaration of Service section of the subpoena.
 - d. Inform the government attorney of any circumstances which may affect the timely appearance of a witness, the production of documentary evidence or any difficulty in locating or serving a witness.
 - e. Maintain a listing of all subpoenas requested, the date each was received, the date each was served, and the date each was returned to the court.
 - f. Keep a log of the records provided by the witness and returned by that witness to the grand jury. Note any records which were requested by the subpoena but not provided. Suggest to add a request in the subpoena that the witness provide a letter referencing any documents requested by the subpoena but not provided.
 - g. Keep a log of the records provided by the witness and turned over to the SA in lieu of the witness' grand jury appearance. Note any records which were requested but not provided. Suggest to add a request in the subpoena that the witness provide a letter referencing any documents requested by the subpoena but not provided.
 - h. Keep a log of the records in (g) above that are presented to the grand jury by the SA.
 - i. Prepare an inventory of records received to associate with the corresponding subpoena.

9.5.2.5.1.1.1
(11-05-2004)

**Attendance of Witnesses
in a Grand Jury or Trial
Proceeding**

- (1) Witnesses may be requested to submit to an interview by an SA and/or an the attorney for the government, in advance of testifying before a grand jury or a court, for purposes of reviewing their testimony and ascertaining whether the necessary documentary evidence is available. Witnesses should be given the maximum possible notice prior to their appearance so that the necessary travel accommodations can be arranged. The attorney for the government office will provide guidance with respect to travel arrangements.
- (2) The attorney for the government office will provide guidance and direction relating to individuals who may or may not be served with a subpoena without prior approval by the attorney for the government or DOJ.

9.5.2.5.1.1.2
(09-30-1998)

**Subpoena for
Production of
Documentary Evidence**

- (1) A subpoena may also request the person to whom the subpoena is directed to produce books, papers, documents, or objects deemed necessary to the investigation to present to the grand jury. The records may be provided to the SA prior to the date set by the subpoena.

9.5.2.5.1.1.3
(09-30-1998)

Custodian of Records

- (1) Service of a subpoena to a third-party record keeper can be directed to the Custodian of Records for the business or corporation.

- 9.5.2.5.1.2
(11-05-2004)
Place of Service
- (1) In the United States: A subpoena directed to a witness for attendance at a court proceeding may be served at any place within the United States.
 - (2) Outside the United States: A subpoena requesting the appearance of a witness, who is a US citizen residing in a foreign country, shall be issued as provided in 28 USC §1783.
- 9.5.2.5.1.3
(11-05-2004)
Failure to Comply
- (1) Failure to comply with the subpoena by any person, without an adequate excuse, may be viewed as a contempt of the court for the district in which it was issued or of the court for the district in which it was served, if it was issued by a US magistrate judge. (USCS FRCP R17(g))
- 9.5.2.5.1.4
(09-30-1998)
Return of Documents to the Grand Jury
- (1) Books, papers, documents, or objects produced as a result of a grand jury subpoena must be presented to the grand jury for their information. Records provided to the SA by the witness in lieu of the witness' grand jury appearance may be returned to the grand jury by the SA.
- 9.5.2.5.1.5
(11-05-2004)
Disclosure of Information
- (1) The subpoena is used to obtain documents and testimony in grand jury proceedings, as well as to compel witness testimony at trial proceedings. Rule 6(e) prohibits the disclosure of information obtained through the grand jury. This information cannot be used in civil proceedings except as authorized in subsection 9.5.2.6.6.2.
- 9.5.2.5.2
(07-29-2002)
Advice of Rights In A Grand Jury Investigation
- (1) IRS procedures for non-custodial advice of rights do not apply to grand jury investigations. The attorney for the government will provide instructions for advising subjects of their rights.
- 9.5.2.5.3
(04-04-2006)
Use of IRS Credentials During a Grand Jury Investigation
- (1) IRS employees may use their official IRS credentials for identification purposes. When exhibiting their credentials, they should advise those contacted that they are acting as assistants to the attorney for the government in conjunction with an investigation.
- 9.5.2.5.4
(07-29-2002)
Use of Informants in a Grand Jury Investigation
- (1) Information provided to the grand jury by an informant is grand jury information and cannot be included in non-grand jury IRS files or disclosed to IRS personnel not assisting the grand jury.
 - (2) When the attorney for the government asks an IRS employee to direct the activities of an informant, the employee should follow the normal guidelines. The IRS should immediately report to the attorney for the government any violation of instructions or law by an informant. If the attorney for the government asks the IRS to make a payment to or on behalf of an informant, the SA should prepare Form 8561, Request for Confidential Funds. The request should state that it contains grand jury information. The names of the approving officials should be added to the Grand Jury Access List.
- 9.5.2.5.5
(11-05-2004)
Collateral Requests Containing Grand Jury Information
- (1) For a collateral request that contains or will result in grand jury information, the SSA or an SA assigned to the grand jury investigation will obtain prior approval from the attorney for the government. The collateral request will state that the request is part of a grand jury investigation governed by the secrecy provisions of Rule 6(e). The replying field office will return the request and the information

obtained with a transmittal memorandum that references Form 9510, Grand Jury Access List (Collateral) includes the name and title of all personnel with access to the grand jury information. Both the requesting and the replying field offices will follow the procedures set forth in subsection 9.5.2.4.1 paragraph (5) above, relating to the issuance of Form 9510. The replying field office should not keep copies of the transmittal, the request, or the attachments.

9.5.2.5.6
(11-05-2004)

**Consensual Monitoring
in a Grand Jury
Investigation**

- (1) SAs planning to use special investigative techniques such as monitoring or other investigative devices will follow the normal procedures. (See IRM 9.4.7, Consensual Monitoring) The offices of the approving officials will provide the names of individuals who had access to the grand jury information contained in the requests and the reports required for these investigative techniques. The SSA will add the names to the Grand Jury Access List.

9.5.2.5.7
(11-05-2004)

**Use of Search Warrants
in a Grand Jury
Investigation**

- (1) The attorney for the government will obtain approval for search warrants using DOJ and IRS procedures. (See IRM 9.4.9, Search Warrants, Evidence, and Chain of Custody).

9.5.2.5.8
(11-05-2004)

**Foreign Travel During
Grand Jury Investigation**

- (1) The attorney for the government must submit a written request to the IRS for an SA to travel to another country or to request information from a foreign country. (See IRM 9.11.2, Domestic and Foreign Travel).

9.5.2.5.9
(11-05-2004)

**Information Documents
from Grand Jury
Sources**

- (1) IRS employees may not prepare any information documents, such as Form 3949, Criminal Investigation Information Item, which contain grand jury information without a Rule 6(e) order.

9.5.2.6
(09-30-1998)

**Administrative
Procedures Peculiar to
Grand Jury
Investigations**

- (1) The following administrative procedures are peculiar to grand jury investigations.

9.5.2.6.1
(11-05-2004)

Control of Tax Returns

- (1) When a case has been referred for a grand jury investigation, CI will control all original tax returns and will establish transaction code (TC) 914 or TC 916 controls on all tax periods under grand jury investigation. The affected operating division(s) will transfer to CI all returns and administrative files for the periods under grand jury investigation.
- (2) If returns for periods under grand jury investigation are located in other field offices, the other operating division with the returns will transfer the returns, together with all administrative files, to CI in the field offices where the grand jury is impaneled. The affected operating division will continue to control returns for any types of taxes and for any periods not being investigated by the grand jury.

- (3) Transaction code 910 will be placed on all individuals and entities input into the Criminal Investigations Management Information System (CIMIS) as Associate Identities.

9.5.2.6.2
(11-05-2004)
**Responsibility for Civil
Statute of Limitations**

- (1) If the tax returns under investigation were under the control of another operating division at the time CI's participation in the grand jury was authorized, the other operating division which transferred the returns to CI is responsible for the civil statute of limitations.
- (2) If there has been no civil involvement before the start of a grand jury investigation and a Rule 6(e) order has not been obtained, CI is not responsible for the civil statute of limitations.

9.5.2.6.3
(02-07-2024)
**Civil Actions During the
Grand Jury Investigation**

- (1) When initiating a request for a grand jury investigation, the SA must determine if any civil action is being taken or planned. The special agent will complete and submit Form 14584, Check for and Suspend Civil Activity Notification, to the civil business operating divisions for deconfliction (see IRM 9.5.1.2.1(6), Procedures in Financial Investigations).
- a. In accordance with Title 26 USC §6103(h)(1), the SA will advise IRS-Civil when CI refers any tax and tax related cases to the US Department of Justice for (FURTHER INVESTIGATION or PROSECUTION). The special agent will complete the Notice of Department of Justice Referral memorandum. The special agent will submit the memorandum to the field office designated Territory Managers (SB/SE Examination-Technical Services and SB/SE Collection Advisory); please follow the applicable field office procedures. In addition, this memorandum should also be forwarded to the following IRS-Civil functions:

| IRS-Civil Business Unit | Electronic E-mailbox |
|---|---------------------------|
| Tax Exempt Government Entities (TEGE): | *TE/GE-EO-FIU |
| Abusive Transactions & Technical Issues (ATTI-LDC): | *SBSE LDC Notifications |
| Large Business & International (LB&I): | *LB&I CI Notifications |
| IRS SB/SE BSA (SB/SE BSA): | *SBSE BSA CI NOTIFICATION |

- (2) The affected other operating division must suspend all civil activity, or receive permission to initiate any action during the grand jury investigation under the policy statement set forth in P-4-26. The Territory Manager of the affected operating division will advise the SAC of a civil function's request to pursue any civil action.
- (3) The SAC will discuss any proposed civil action with the attorney for the government. The attorney for the government will provide the SAC in writing with any reasons why a proposed civil action may jeopardize the criminal investigation.

- (4) The SAC will weigh the proposed civil action against the criminal investigation and make a recommendation to the operating division Territory Manager without disclosing any grand jury information.
- (5) In the event that the other operating division does not agree to suspend all civil activity, the procedures contained in P-4-26 should be followed.

9.5.2.6.4
(06-24-2014)
**Disclosure Provisions
Concerning State and
Local Law Enforcement
Involved in Grand Jury
Investigations**

- (1) Tax information obtained under 26 USC §6103 for use in a tax or a non-tax Federal grand jury investigation generally may be disclosed to Federal officers and employees personally and directly engaged in the investigation. However, while 26 USC §6103 generally prohibits disclosure of tax information to state and local law enforcement personnel assisting the attorney for the government in such investigations, disclosures can be made in limited circumstances (see IRM 9.3.1, Disclosure).

9.5.2.6.5
(11-05-2004)
**Attempted Bribery in
Grand Jury
Investigations**

- (1) If an allegation or overture of bribery is made during a grand jury investigation, CI will inform TIGTA and give them the name of the attorney for the government assigned to the investigation. Criminal Investigation will not give TIGTA any other information during this initial report (See IRM 9.5.12, Processing Completed Criminal Investigation Reports).

9.5.2.6.6
(11-05-2004)
**Reports and Closing
Procedures in Grand
Jury Investigations**

- (1) The following subsections contain information relating to reports and closing procedures in grand jury investigations.

9.5.2.6.6.1
(11-05-2004)
Final Report

- (1) At the end of the grand jury investigation, the SA will prepare a final report similar to the final report in an administrative investigation and address it to the attorney for the government (See IRM 9.5.12, Processing Completed Criminal Investigation Reports).

Note: Approval for indictment of any tax or tax-related violations must be obtained by the attorney for the government from the DOJ, Tax Division.

- (2) The special agent should prepare separate exhibit folders for documents governed by Rule 6(e) and clearly identify them as grand jury information. The SAC should not give copies of the report to any person not specifically on the Grand Jury Access List.

9.5.2.7
(06-24-2014)
**Authority For
Requesting Grand Jury
Investigations**

- (1) Department of the Treasury General Counsel Order No. 4.
- (2) Department of the Treasury Order No. 150–35.
- (3) Tax Division Directive No. 86–59.
- (4) Internal Revenue Service Delegation Order No. 9-6.

Exhibit 9.5.2-1 (11-05-2004)**Grand Jury Guidelines**

In determining if something is a “matter occurring before the grand jury”, courts have looked at factors including:

when the evidence was obtained

whether the evidence was obtained independent of the grand jury

whether the grand jury process was used to obtain the evidence

whether the evidence was ever presented to the grand jury

whether the evidence was obtained as the result of a lead, and if so, did the lead constitute a grand jury matter

whether the evidence was created specifically for the grand jury

what type of evidence is at issue

whether the disclosure would reveal what transpired before the grand jury

whether any of the traditional reasons for keeping the grand jury proceedings secret were implicated

whether the evidence has been disclosed in open court

Items generally constituting a “matter occurring before the grand jury” and protected by Rule 6(e) include:

transcripts of grand jury testimony

witness identification information

target identification data

grand jury subpoenas and records obtained therefrom

memorandums and other written records of meetings with subjects or witnesses wherein the individual was advised of existence of grand jury investigation

government memorandums, summaries, letters, analysis, etc., that refer to grand jury testimony or subpoenaed documents

Special Agent's Reports

Items generally not constituting a “matter occurring before the grand jury” and not protected by Rule 6(e) include:

evidence gathered prior to a grand jury referral, which has been clearly identified and segregated, even if subsequently presented to a grand jury

evidence obtained by a truly independent source that does not reveal the inner workings of the grand jury

evidence obtained during the course of a grand jury investigation, without use of the grand jury process and not presented to the grand jury, and without any disclosure as to the existence of a grand jury

public domain information, including government agency records, court pleadings, discovery requests and responses, filed (non-sealed) search warrant affidavits, indictments, and plea agreements

Exhibit 9.5.2-1 (Cont. 1) (11-05-2004)
Grand Jury Guidelines

In-court testimony and exhibits related thereto, which are not under seal, even if such information was previously presented to the grand jury

summaries and analyses of evidence prepared prior to the referral to the grand jury

Exhibit 9.5.2-2 (06-24-2014)

Grand Jury (GJ) Approval Process

| Process | Approval Chain | Notes |
|---|-------------------------------|---|
| 1. Grand Jury Requests | | If the GJ Request falls into the category of a Sensitive Investigation* the Chief, CI must concur in writing his/her approval of the GJ Request |
| - Service Initiated - T26 | SSA | • Consult CT Counsel in developing request |
| | SAC DOJ Tax USA | • CT Counsel reviews request and prepares a memo to the SAC recommending action |
| - USA Initiated - T26 | SSA | • Consult CT Counsel in developing request. |
| | SAC | • CT Counsel reviews request and prepares a memo to the SAC recommending action |
| | DOJ Tax USA | • DOJ Tax must approve any pure Title 26 GJ request |
| - T18/31 Service or USA Initiated | SSA SAC USA | • Consult CT Counsel in developing request |
| EXPANSIONS | | |
| Title 26 Expansion | SSA | • Any Title 26 expansion that includes new subjects not previously part of the ongoing GJ, must be sent through DOJ Tax |
| | SAC DOJ Tax USA | |
| Title 18/31 Expansion to include Title 26 charges | SSA | • Directive 86-59 applies in this situation ** |
| | SAC USA w/cc to DOJ Tax | • Unless the request meets one of the exceptions listed in 86 - 59** a cc copy of the request is sent to DOJ |

DEFINITIONS:

1. A **sensitive*** investigation is defined as one involving (see IRM 9.4.1.6.3(4), Sensitive Investigations):

- a. Currently serving elected federal officials.
- b. Currently serving Article III judges.

Exhibit 9.5.2-2 (Cont. 1) (06-24-2014)**Grand Jury (GJ) Approval Process**

- c. Currently serving high-level Executive Branch Officials. For the Treasury Department, this is defined as items d through g listed below:
- d. All individuals within the Treasury Department serving in Executive Levels I through V.
- e. All individuals within the Treasury Department serving in the Senior Executive Service grades GS-16 and above.
- f. All individuals within the IRS grade GS-15 serving in positions centralized in the IRS Executive Resources Board.
- g. All individuals within the Treasury Department (other than IRS) in grade GS-15 which the Deputy Secretary may designate.
- h. Currently serving elected statewide officials.
- i. Currently serving members of the highest court of the states.
- j. Mayors currently serving populations of 250,000 or more.
- k. Perjury in the US Tax Court.
- l. Exempt organizations.
- m. Publicly traded companies.
- n. Companies with annual gross revenues exceeding \$10,000,000,000.

2. A non - sensitive investigation is one that does not involve one of the ten categories defined as sensitive.

** Exceptions to DOJ Directive 86 - 59 - Grand Jury Requests must go to DOJ Tax

- Multi-jurisdictional investigations
- Subjects considered to have national prominence, such as:
 - Local, state, federal, or foreign public officials or political candidates.
 - Members of the judiciary.
 - Religious leaders.
 - Representatives of the electronic or printed news media.
 - Officials of a labor union.
 - Major corporations and/or their officers.