



MANUAL TRANSMITTAL

Department of the Treasury
Internal Revenue Service

25.3.4

JUNE 16, 2025

EFFECTIVE DATE

(06-16-2025)

PURPOSE

- (1) This transmits revisions to IRM 25.3.4, Suits Against IRS Employees

MATERIAL CHANGES

- (1) Editorial changes made throughout to update references.

EFFECT ON OTHER DOCUMENTS

This material supersedes IRM 25.3.4, dated June 1, 2023.

AUDIENCE

SBSE Collection Employees and all Operating Divisions.

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Small Business / Self-Employed

25.3.4

Suits against IRS Employees

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25.3.4.1
(06-16-2025)
Program Scope and Objectives

- (1) **Purpose:** This IRM provides procedural guidelines on responding to suits brought against IRS employees resulting from official IRS activities.
- (2) **Audience:**
 - IRS employees use this IRM when in receipt of a suit naming them in relation to actions within the scope of their employment, and
 - Collection, Civil Enforcement Advice and Support Operations (CEASO) Advisors use this IRM, if requested to assist the Associate Chief Counsel, General Legal Services (GLS) in coordinating responses for these types of suits, but only if requested.
- (3) **Policy Owner:** Director, Collection Policy.
- (4) **Program Owner:** The program owner is Collection, an organization within the Small Business Self-Employed (SBSE) division.
- (5) **Primary Stakeholders:** The primary stakeholders are Chief Counsel and Department of Justice attorneys.
- (6) **Program Goals:** The goal of the program aligns with IRS Strategic Plan Objective 3 to: Focus expanded enforcement on taxpayers with complex tax filings and high-dollar noncompliance to address the tax gap.

25.3.4.1.1
(06-01-2023)
Background

- (1) On occasion litigation is initiated against an IRS employee. Generally suits resulting from employees' official actions should be brought against the United States, not against individual employees. However, this general statement is no guarantee that employees will not be sued.
- (2) In damage actions filed in state court against Service employees acting within the scope of their employment, the GLS will take all appropriate action to request and assist the U.S. Attorney in the judicial district in which the suit was filed with removing the case to federal court pursuant to *28 USC 1442*, Federal Officers or Agencies Sued or Prosecuted. Field Counsel will also be responsible for providing any assistance requested by the U.S. Attorney with regard to the removals.
- (3) The IRS has determined that its internal processing of most of these suits should be the same as the ordinary collection cases, where Counsel issues a defense letter and Advisory assists Counsel with any documentation requested.

25.3.4.1.2
(06-01-2023)
Authority

- (1) Under the Supreme Court's holding in *Bivens v. Six Unknown Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971), federal officials acting in the performance of their official duties are subject to personal liability for any violations of constitutional rights of which a reasonable official in a similar situation would be aware.
 - Specific Service policies are located in IRM 1.2.1, Servicewide Policy Statements.
 - Specific Service delegations of authority are located in IRM 1.2.2, Servicewide Delegations of Authority, and IRM 1.2.2.14, Delegations of Authority for Special Topics Activities.
 - Specific delegation of authority and procedures related to testifying are in: IRM 1.2.2.11.2, Delegation Order 11-2 (Rev. 3), Authority to Permit Disclosure of Tax Information and to Permit Testimony or the Production

of Documents, IRM 11.3.35-2, Testimony Considerations, and 26 CFR 301.9000-1, Definitions when used in Sections 301.9000-1 through 301.9000-6.

- (2) Below lists contain the legal authorities related to certain claims that may be encountered in relation to a suit against an IRS employee.

Authorities in Title 26 (Internal Revenue Code)

US Code Section	Regulation	Title
IRC 6343(b)	26 CFR 301.6343-2	Return of property
IRC 7345(e)	no regulation	Revocation or denial of passport in case of certain tax delinquencies, Judicial review of certification
IRC 7426	26 CFR 301.7426-1	Civil actions by persons other than taxpayers
IRC 7426(h)	26 CFR 301.7401-2	Recovery of damages in certain cases
IRC 7430	26 CFR 301.7430-0	Awarding of costs and certain fees
IRC 7432	26 CFR 301.7432-1	Civil damages for failure to release lien
IRC 7433	26 CFR 301.7433-1	Civil damages for certain unauthorized collection actions
Supreme Court case	NA	<i>Bivens v Six Unknown Named Agents of the Federal Bureau of Narcotics, 403 U.S. 388 (1971)</i>

25.3.4.1.3
(06-01-2023)
**Roles and
Responsibilities**

- (1) The responsibility for anyone in receipt of a summons and complaint against an IRS employee resulting from their official IRS activities is to notify the correct parties. See IRM 25.3.4.2, Procedures.
- (2) IRM 5.17.1, Legal Reference Guide for Revenue Officers, General Information, provides a list of the parties with an explanation of their role with suits.
- (3) Generally, GLS has primary responsibility for suits against IRS employees relating to their official IRS activities. Counsel uses their Chief Counsel Directives Manual (CCDM) for instructions in this area. See those references below:
 - IRM 39.3.1.3(1), Suits for the Recovery of Monetary Damages Where the Federal Tort Claims Act Does Not Serve as the Sole Jurisdictional Basis. An employee, sued while performing assigned duties, may request representation by the Department of Justice (DOJ),
 - IRM 39.3.1.1.11(2), Litigation under the Federal Tort Claims Act,
 - IRM 39.3.1.3(3), Suits for the Recovery of Monetary Damages Where the Federal Tort Claims Act Does Not Serve as the Sole Jurisdictional Basis, and
 - IRM 39.3.1.8, Requests for Government Representation of Non-Government Defendants.

25.3.4.1.4
(06-01-2023)
**Program Management
and Review**

- (1) **Program Reports:** The Associate Chief Counsel (GLS) has been delegated the responsibility for coordinating with DOJ the defense of civil actions against individually named employees for alleged actions taken by employees in the performance of their official duties. See in the CCDM, IRM 39.3.1.3(2), Suits for the Recovery of Monetary Damages Where the Federal Tort Claims Act Does Not Serve as the Sole Jurisdictional Basis.
- (2) **Program Effectiveness:** The Associated Chief Counsel (GLS) has delegated responsibility See IRM 25.3.4.1.4 (1), Program Reports and IRM 25.3.4.1.5, Program Controls.

25.3.4.1.5
(06-01-2023)
Program Controls

- (1) The Associate Chief Counsel (GLS) has been delegated the responsibility for coordinating with DOJ the defense of civil actions against individually named employees for alleged actions taken by employees in the performance of their official duties. See in the CCDM, IRM 39.3.1.3(2), Suits for the Recovery of Monetary Damages Where the Federal Tort Claims Act Does Not Serve as the Sole Jurisdictional Basis.
- (2) CEASO Advisory maintains a control for any litigation assistance requested by GLS or DOJ until the suit is closed. After case closure see Document 12990, Records and Information Management Records Control Schedules, under the 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.
- (3) 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 2016-05*, Discovery Obligations to Preserve Evidence, Including Electronically Stored Information.

25.3.4.1.6
(06-01-2023)
Terms and Acronyms

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

Table of Terms

Term	Definition
CC	Chief Counsel
CCDM	Chief Counsel Directives Manual
CEASO	Civil Enforcement Advice and Support Operations
CFR	Code of Federal Regulations
DOJ	Department of Justice
FRCP	Federal Rules of Civil Procedure

Term	Definition
GLS	General Legal Services
IRC	Internal Revenue Code
NF OI	Non Field Other Investigation
NFTL	Notice of Federal Tax Lien
Rev.	Revision
Treas. Reg	Treasury Regulation
USC	United States Code
U.S.	United States

25.3.4.1.7
(06-01-2023)

Related Resources

- (1) For a discussion of types of suits that may be brought against the United States as a result of actions taken by an employee of the Government, see
 - IRM 9.3.1.11, Subpoenas Served on CI Employees and Requests To Testify,
 - IRM 9.2.3.9.1.1, If Injured Person Alleges Violation of Constitutional Rights,
 - IRM 5.17.5.12, Claims Founded on Tort - -Federal Tort Claims Act,
 - IRM 5.17.5.14, Violations of Constitutional Rights - -Bivens Actions,
 - IRM 34.5.7, Suits Brought Against the United States, Damages Litigation,
 - IRM 39.3.1, General Legal Services; Claims Suits and Related Matters,
 - 28 CFR 14.4, Administrative claims; evidence and information to be submitted, and
 - IRM 1.14.5.4, Workers' Compensation Claims and Tort Claims Guidance.
- (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).

25.3.4.2
(06-01-2023)

Procedures

- (1) GLS has primary responsibility for suits filed against IRS employees sued in their official capacity. They will provide advice and assistance to employees in these circumstances.
- (2) **Immediately Notify and Provide a Copy of Suit Summons and Complaint plus any Subpoenas to:**
 - a. Your manager; and
 - b. GLS.

Note: If the suit cites IRC 7213, Unauthorized disclosure of information, or IRC 7431, Civil damages for unauthorized inspection or disclosure of returns and return information, Contact Disclosure.

- (3) **Attorney - Client Privilege:** Communications with your manager are not protected under the attorney-client privilege. Communications with GLS are protected as stated in the CCDM at IRM 39.3.1.3.2(6), Coordination with DOJ.
- (4) **Representation:** Employees sued in their official capacity, may request representation from DOJ. GLS will assist in preparing an affidavit and securing representation from the Department of Justice, if desired. Below are the CCDM references:
- IRM 39.3.1.1.11(2), Litigation under the Federal Tort Claims Act,
 - IRM 39.3.1.3(3), Suits for the Recovery of Monetary Damages Where the Federal Tort Claims Act Does Not Serve as the Sole Jurisdictional Basis, and
 - IRM 39.3.1.8, Requests for Government Representation of Non-Government Defendants.
- (5) **Subpoenas:** If served with a subpoena or other request to testify or produce records in a suit, inform GLS. If they need assistance, they will contact CEASO Advisory. See also,
- IRM 25.3.3.6, Subpoenas and Requests for IRS Personnel to Testify or Produce Records, for further guidance, and
 - IRM 9.3.1.11, Subpoenas Served on CI Employees and Requests To Testify.

