



MANUAL TRANSMITTAL

Department of the Treasury
Internal Revenue Service

4.11.51

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EFFECTIVE DATE

(09-23-2016)

PURPOSE

- (1) This transmits revised IRM 4.11.51, *Examining Officer's Guide (EOG), Return Preparer Program*.

MATERIAL CHANGES

- (1) The Examining Officer's Guide serves as a quick reference guide for Return Preparer Program procedures on examinations. It acts as an index, providing a guide to actions needed for a given examination activity and refers the reader to supporting references.

IRM Reference	Description of Change
IRM 4.11.51.1	Added additional references.
IRM 4.11.51.2	Moved content to other sections and updated overview of Return Preparer Program.
IRM 4.11.51.3	Moved content to IRM 4.11.51.4 and re-purposed for Return Preparer Coordinator definition.
IRM 4.11.51.4	Added additional sections to include information about Noncompliant Return Preparer, Ghost Preparers, Annual Filing Season Program, and Initiating a Preparer Project.
IRM 4.11.51.5	Moved content to IRM 4.11.55.4.5. Re-purposed section to provide guidance on tax return preparer penalties.
IRM 4.11.51.6	Added paragraphs to provide additional guidance to examiners.
IRM 4.11.51.7	Added a section to provide guidance to SB/SE and Large Business & International examiners on Return Preparer Referrals. Incorporated Interim Guidance on SB/SE Referrals and Office of Professional Responsibility Referrals. Added referrals to Criminal Investigation.
IRM 4.11.51.8	Added a section to provide guidance to examiners on Return Preparer Misconduct and to cross reference to IRM 25.24 Return Preparer Misconduct Program.
IRM 4.11.51.9	Added a section to cross reference to IRM 4.11.55 Power of Attorney Rights and Responsibilities.

EFFECT ON OTHER DOCUMENTS

This IRM supersedes IRM 4.11.51 dated October 1, 2004. The following Interim Guidance Memoranda have been incorporated into this IRM:

SB/SE-04-1014-0039, *Interim Guidance on Office of Professional Responsibility (OPR) Referrals*.

SB/SE-04-1115-0074, *Reissued Interim Guidance on Office of Professional Responsibility (OPR) Referrals*.

SB/SE-04-0216-0010, *Interim Guidance on SB/SE Return Preparer Referrals*.

AUDIENCE

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Small Business/Self-Employed

4.11.51

Return Preparer Program

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4.11.51.1
(09-23-2016)
References

(1) References for Return Preparer Program.

- IRC 6107, *Tax Return Preparer Must Furnish Copy of Return to Taxpayer and Must Retain a Copy or List*
- IRC 6103(k)(6) , *Disclosure by certain officers and employees for investigative purposes*
- IRC 6109, *Identifying Numbers*
- IRC 6694 , *Understatement of taxpayer's liability by tax return preparer*
- IRC 6695 , *Other assessable penalties with respect to the preparation of tax returns for other persons*
- IRC 6671, *Rules for application of assessable penalties*
- IRC 6700 , *Promoting abusive tax shelters, etc.*
- IRC 6701 , *Penalties for aiding and abetting understatement of tax liability*
- CFR 1.6695-1, *Other assessable penalties with respect to the preparation of tax returns for other persons (b) Failure to sign return*
- CFR 301.7602-2(b), *Third Party Contacts*
- CFR 301.7701-15, *Tax Return Preparer*
- Rev. Proc. 81-38, *Limited practice without enrollment*
- Rev. Proc. 2014-42, *Annual Filing Season Program*
- IRM 1.2.24.2, *Policy Statement 25-2 Return Preparer Misconduct*
- Delegation Order SBSE 145.7, *Authority to Request and Inspect Preparers Records*
- IRM 4.1.10, *Return Preparer Program Coordinator*
- IRM 4.8.10, *Notice of Determination of Worker Classification*
- IRM 4.10.2 ,*Preparer Steering Committee-SB/SE*
- IRM 4.10.3, *Examination Techniques*
- IRM 4.11.55, *Power of Attorney Rights and Responsibilities*
- IRM 4.11.57, *Third Party Contacts*
- IRM 4.32.2, *The Abusive Transactions (AT) Process*
- IRM 11.3.21, *Investigative Techniques*
- IRM 20.1.6, *Preparer, Promoter, Material Advisor Penalties*
- IRM 20.1.6.1.6, *Program Action Cases*
- IRM 25.1.2, *Recognizing and Developing Fraud*
- IRM 25.1.3.6, *Return Preparers*
- IRM 25.24.5, *Return Preparer Misconduct-Field Examination*
- IRM 25.27.1, *Third Party Contacts*
- Letter 3173, *Third Party Contacts*
- Letter 3164-N, *Third Party Contact to Preparers*

4.11.51.2
(09-23-2016)
Overview of Return Preparer Program

- (1) The Return Preparer Program (RPP) is an agency-wide effort to enforce compliance of tax return preparers. Tax return preparers are a critical component of tax administration and provide a unique opportunity to impact taxpayer behavior and compliance with tax laws. The IRS encourages compliance among tax return preparers through a variety of means by providing targeted enforcement activities to identify and address the most egregious return preparers. The Return Preparer Program includes all tax return preparers and not only self-identified return preparers. All business units under the Services and Enforcement Organization have tax return preparer strategies, including the Return Preparer Office (RPO), the Office of Professional Responsibility (OPR), Return Integrity Compliance Services (W&I RICS), and Examination.

4.11.51.3
(09-23-2016)
**Return Preparer
Coordinator**

- (1) The Return Preparer Coordinator (RPC) is responsible for planning and coordinating the implementation of the Area and National Return Preparer Strategy. RPCs provide direction, knowledge and guidance on tax return preparer related issues. Their duties include: receiving and evaluating referrals regarding potential preparer misconduct, initiating and monitoring Program Action Cases and assisting with and reviewing preparer penalty cases.
- (2) Examples of when to contact your RPC include, but are not limited to:
 - A return that appears to have questionable preparation issues
 - Suspected preparer misconduct
 - Questionable Power of Attorney
 - Assistance in obtaining information on a Preparer Tax Identification Number (PTIN)
 - Assistance with completing a preparer referral
 - Questions about documentation needed to support a preparer referral
 - Assistance with establishing and completing a preparer penalty case
- (3) RPCs are the liaison between field employees and the Return Preparer Office, Office of Professional Responsibility and IRS Headquarter functions. All questions and concerns should be elevated through the Area RPC. For more guidance on Return Preparer Coordinator duties, refer to IRM 4.1.10, *Return Preparer Program Coordinator*.

4.11.51.4
(09-23-2016)
**Noncompliant Return
Preparers Overview**

- (1) The Return Preparer Program (RPP) allows for the examination of returns prepared by a particular tax return preparer, if information indicates a pattern of noncompliance. The examination of a tax return preparer's client's tax returns without the approval of the Area Director is prohibited. During the examination of the noncompliant return preparer, erroneously filed tax returns may be identified.
- (2) A tax return preparer is anyone who prepares for compensation or employs one or more persons to prepare for compensation, any tax return or claim for refund. The definition of a tax return preparer is addressed in CFR 301.7701-15. All tax return preparers must properly identify themselves with their Preparer Taxpayer Identification Number on all tax returns, in which they were compensated for preparing.

4.11.51.4.1
(09-23-2016)
**Noncompliant Return
Preparers**

- (1) The Return Preparer Coordinator (RPC) and the Area Preparer Steering Committee (PSC) gather information on tax return preparers from various sources. This includes:
 - a. Information received from examiners (main source)
 - b. Preparer penalty records
 - c. Information items
 - d. Referrals from other functions

See IRM 4.1.10.3.1, *PAC Inventory Sources*.
- (2) The RPC maintains files containing information on return preparer activities. When a pattern of noncompliance is recognized, the IRS will consider action to prohibit the tax return preparer from practicing before the IRS. Preparer action will be limited to cases where information indicates a tax return preparer has

engaged in a widespread practice of making material errors. This conduct demonstrates intentional misconduct or clear incompetence in preparing income tax returns.

4.11.51.4.2
(09-23-2016)
**Information Provided
About Noncompliant
Preparers**

- (1) When submitting information about a noncompliant return preparer, be as specific as possible about noncompliance. Provide as much of the following information as possible:
 - Identification of the tax return preparer
 - Name and taxpayer identifying number of the examined taxpayer(s)
 - Examples of the noncompliance
 - First two pages of the examiner's report
 - Source of the information which resulted in a referral
 - Copies of preparer penalties asserted
- (2) See IRM 4.11.51.7.1, for submitting referrals about noncompliant preparers.

4.11.51.4.3
(09-23-2016)
Ghost Preparers

- (1) Ghost preparers are preparers who fail to properly identify themselves in accordance with IRC 6109, *Identifying Numbers*. All compensated return preparers must have a Preparer Tax Identification Number (PTIN). Ghost preparers are defined as preparers who:
 - Omit any identification information and the return appears to be self-prepared
 - Report a false or fabricated identification number on the tax return filed with the IRS
 - Report a valid identification number, which is assigned to another individual on the tax return filed with the IRS
- (2) If an examiner encounters a potential ghost preparer issue during an examination, the following should be considered:
 - IRC 6695(b), *Failure to Sign Return*, and/or IRC 6695(c), *Failure to Furnish Identifying Number*
 - A referral to the RPC
- (3) The examiner should attempt to obtain as much information about the tax return preparer from the taxpayer as possible in order to support the penalty.

4.11.51.4.4
(09-23-2016)
**Representation
Overview**

- (1) The IRS has a voluntary program called the Annual Filing Season Program (AFSP) that recognizes the efforts of noncredentialed return preparers who aspire to a higher level of professionalism. Those who participate can meet the requirements by obtaining a certain number of continuing education hours in preparation for a specific tax year. They must also renew their preparer tax identification number (PTIN) for the upcoming year and consent to adhere to the obligations in Treasury Department Circular 230, Subpart B, Section 10.51.
- (2) Participation in the AFSP provides unenrolled return preparers with limited representation rights. They are permitted to represent taxpayers before the IRS under Rev. Proc. 2014-42, which supersedes Rev. Proc. 81-38. Unenrolled return preparers are defined in IRM 4.8.10.11.1.1, *Unenrolled Return Preparer*.
- (3) According to Rev. Proc. 2014-42, in order for unenrolled return preparers to represent taxpayers for tax returns filed after December 31, 2015, they must:

- Have a valid AFSP Record of Completion in the calendar year(s) in which the tax return was filed, and
- Have a valid AFSP Record of Completion in the year(s) in which the representation occurs.

Note: For tax returns filed prior to December 31, 2015, unenrolled return preparers can follow the rules of representation in Rev. Proc. 81-38.

- (4) Examiners can verify if an unenrolled return preparer holds an AFSP Record of Completion by searching the Directory of Federal Tax Return Preparers with Credentials and Select Qualifications on [www.irs.gov \(http://irs.treasury.gov/rpo/rpo.jsf\)](http://irs.treasury.gov/rpo/rpo.jsf).

4.11.51.4.5
(09-23-2016)
Initiating a Preparer Project

- (1) When the information compiled by the Return Preparer Coordinator (RPC) or Preparer Steering Committee (PSC) indicates a pattern of noncompliance exists with the returns prepared, action to prohibit the preparer from practicing before the IRS is considered.
- (2) Examiners should request a list of all individual and business returns prepared by the preparer under the authority of IRC 6107, *Tax Return Preparer Must Furnish Copy of Return to Taxpayer and Must Retain a Copy or List* for developmental purposes during the examination of the preparer penalty case.
- (3) The RPC orders a sample of returns from these lists as well as the preparer inventory list (PIL) and reviews them for audit potential. If the RPC determines there is sufficient audit potential in the sample, the RPC will request concurrence from the PSC.
- (4) Upon concurrence, the RPC will obtain clearance from the Lead Development Center (LDC) (IRM 4.1.10.3.4) and CI (IRM 4.1.10.3.3) to ensure that there are no conflicts with an existing promoter or CI investigation.
- (5) Upon receipt of LDC and CI clearances, the PSC will submit a program action request memorandum to the Area Director through the Territory Manager, for approval. If concurrence is not obtained, follow standard conflict procedures.
- (6) If approved, the RPC will establish the cases on AIMS using source code 49 and local project and tracking codes. These codes (including source code 49) will be used on all related pick-ups, subsequent and prior years.
- (7) If not approved, no action will be taken and the tax return preparer project for the preparer will be closed.

4.11.51.5
(09-23-2016)
Preparer Penalties Overview

- (1) By pursuing preparer penalties when warranted, preparers will be educated on proper tax preparation techniques and procedures. Addressing a tax return preparer's noncompliant behavior will have an impact on the tax returns they prepare. Correcting an unlawful tax return preparer can have an exponential impact on the tax compliance of many tax returns.
- (2) During an examination of the client taxpayer's return, **do not** disclose a preparer penalty decision to the taxpayer or preparer.
- (3) The examination case of the related client should be closed prior to establishing the preparer penalty case.

- (4) Consideration of tax return preparer penalties under IRC 6694 and IRC 6695 is required on all examinations.
- (5) Examination employees should consider compliance of the tax return preparer during every examination. SB/SE and LB&I examination employees address noncompliance of return preparers through proposed preparer penalties and referrals to the Area's RPC. Examination employees should not send referrals to Return Preparer Office (RPO) to address noncompliant return preparers in lieu of penalty consideration. Some common examples of noncompliance that should have penalty considerations and a referral to the Area's RPC include:
 - PTIN requirement violations
 - Egregious errors and/or omissions on client tax returns, and
 - A pattern of noncompliance by the tax return preparer
- (6) If a tax return preparer is not tax compliant, the examination employee should discuss the potential for a tax return preparer information referral with the group manager and Area RPC.

4.11.51.5.1
(09-23-2016)
IRC 6694 Penalties

- (1) Examiners can find information on IRC 6694 , *Understatement of Taxpayer's Liability by Tax Return Preparer* in IRM 20.2.6, *Preparer, Promoter, Material Advisor Penalties*.
 - IRC 6694(a), *Understatement Due to Unreasonable Position*
 - IRC 6694(b), *Understatement Due to Willful or Reckless Conduct*
- (2) A mandatory referral to the OPR is required when IRC 6694(b) penalties are asserted.

4.11.51.5.2
(09-23-2016)
IRC 6695 Penalties

- (1) IRC 6695, *Other Assessable Penalties With Respect to the Preparation of Tax Returns for Other Persons*. See IRM 20.1.6.5, *IRC 6695 Penalties That May Apply to a Tax Return Preparer*, for detailed information regarding IRC 6695 penalties.
- (2) IRC 6695 penalties can be asserted in conjunction with IRC 6694 penalties.
- (3) Anyone who is paid to prepare or assist in the preparation of a tax return/claim must obtain a Preparer Tax Identification Number (PTIN) per CFR 1.6109-2(a)(2)(ii). A PTIN cannot be shared among multiple individuals in a firm – each person must obtain and use their own PTIN. The PTIN must be included in the tax return preparer section of the tax return filed with the IRS. If the PTIN is not present on the return prepared then the tax return preparer is subject to an IRC 6695(c), *Failure to Furnish Identifying Number* , penalty. The PTIN must be nine (9) characters beginning with a 'P'. Anything else is not acceptable and is subject to IRC 6695(c) penalty.

4.11.51.5.3
(09-23-2016)
Other Penalties

- (1) Examiners may find more information on preparer penalties at IRM 20.1.6, *Penalty Handbook, Preparer, Promoter, Material Advisor Penalties*.

4.11.51.6
(09-23-2016)
Third Party Contacts

- (1) IRC 6671, *Rules for Application of Assessable Penalties*, treats preparer penalties as taxes. Therefore, when an examiner makes contact to determine if the preparer/promoter is liable for a penalty, third party notification may be required.

- (2) Third-party contact defined. Contacts subject to IRC 7602(c), and this regulation shall be called "third-party contacts." A third-party contact is a communication which —

- 1) Is initiated by an IRS employee;
- 2) Is made to a person other than the taxpayer;
- 3) Is made with respect to the determination or collection of the tax liability of such taxpayer;
- 4) Discloses the identity of the taxpayer being investigated; and
- 5) Discloses the association of the IRS employee with the IRS.

- (3) If the examination of a preparer's client's tax returns are completed for the purpose of determining whether the preparer is subject to a preparer penalty AND if the five requirements found in the definition of CFR 301.7602-2(b) are met, third party contact procedures must be followed.

Note: In order to adhere to third party contact procedures, examiners should advise taxpayers they were selected for audit as part of a preparer compliance review and ask if the taxpayer fears reprisal. Examiners should not disclose any more information than is necessary to conduct the examination of the client taxpayer.

- (4) Contacts subject to IRC 7602(c) and this regulation shall be called **third-party contacts**. A third-party contact is a communication which—

1. Is initiated by an IRS employee;
2. Is made to a person other than the taxpayer;
3. Is made with respect to the determination or collection of the tax liability of such taxpayer;
4. Discloses the identity of the taxpayer being investigated; and
5. Discloses the association of the IRS employee with the IRS.

- (5) In every third party contact (IRM 4.11.57,) the examiner must advise the third party contact (including client taxpayer) before the conclusion of the initial interview that by law the IRS is required to provide his or her name to the preparer/taxpayer as a third party contact (IRM 25.27.1.3.5). There is an exception to this notification if the third party believes that notifying the taxpayer may result in reprisal against them or any person. The examiner should accept the third party's response on face value. In addition, the examiner may make the reprisal determination based on the facts and circumstances of the case.

- (6) If any reprisal concerns exist, the examiner will complete Form 12175, *Third Party Contact Report Form*, with only the information in IRM 4.11.57.4.2.3. The Form 12175 is forwarded to the Area Third Party Contact Coordinator. The information on Form 12175 is retained in a database, but will not be included in the list of persons contacted (Letter 3173,) when provided to the taxpayer.

Caution: Ensure information about an individual fearing reprisal is not inadvertently disclosed. Information in the case file referencing the identity of the third party should be placed in a confidential envelope and clearly marked.

- (7) If the preparer's/promoter's clients are being contacted to start an examination of the client's return, then this is not considered a third party contact since the

purpose of the contact is to determine the client's tax liability and not whether the preparer/promoter is subject to a penalty. This is an example of a non-PAC audit.

Example: If during a compliance review of a preparer's EITC files it is discovered that a client's return appears to have overstated EITC, the contact with the client is NOT considered a third party contact.

Note: Letter 3164-N, *Third Party Contact to Preparers*, is used to provide third party notification to return preparers before beginning program action examinations.

(8) Refer to IRM 4.1.10.5, *Third-Party Notification in PACs*, for additional information.

(9) Refer to IRM 4.1.10.3, *Program Action Cases Overview*, for information on PACs.

Note: Caution should be taken to not disclose any tax information of a confidential nature when contacts are made with third parties (IRM 4.10.3.3.1.4(3)).

Exception: IRC 6103(k)(6) provides that Service employees may make investigative disclosures to the extent necessary in obtaining information, which is not otherwise reasonably available, with respect to the correct determination of tax, liability for tax, or the amount to be collected. See IRM 11.3.21.3, *Requirements for Investigative Disclosures*, for additional guidance.

4.11.51.7
(09-23-2016)
**Return Preparer
Referrals**

(1) This section provides guidance on preparing and submitting return preparer referrals.

4.11.51.7.1
(09-23-2016)
**SB/SE and LB&I Return
Preparer Referrals**

(1) When appropriate, SB/SE examiners will make a referral to their Area RPC on Form 14719, *Small Business/Self Employed (SB/SE) Return Preparer Referral*. Form 14719 should be forwarded via e-mail to the Area RPC where the practitioner resides. The e-mail address for your Area RPC can be found on Form 14719.

(2) When appropriate, LB&I examiners will e-mail the LB&I RPC explaining the reason for the referral, including the tax return preparer's name, address, and identification number, the taxpayer's name and identification number, and an explanation of the noncompliance identified on the part of the tax return preparer.

(3) Examination employees should also adhere to procedures for making other types of tax return preparer referrals per IRM 4.11.55, *Examination Officers Guide (EOG)*, *Power of Attorney Rights and Responsibilities*. Examiners may contact their Area's RPC for guidance on making referrals.

4.11.51.7.2
(09-23-2016)

**Return Preparer Office
(RPO) Referrals**

- (1) SB/SE and LB&I examination employees should not send referrals to the RPO in lieu of penalty consideration.
- (2) The public and IRS non-enforcement employees may send a referral to RPO using Form 14157, , *Return Preparer Complaint*, for suspected misconduct. Based on specific criteria, the RPO will forward the referral to the Exam Area Return Preparer Coordinator (RPC) for consideration. RPO generally does not send a referral to the RPC until RPO receives at least three or more complaints against a tax return preparer, unless the tax return preparer is currently under examination. Form 14157 has instructions on when to use the form and when to send a referral to RPO. Form 14157 may be submitted through the RPO e-mail box at *RPO Referrals.

4.11.51.7.3
(09-23-2016)

**Office of Professional
Responsibility (OPR)
Referrals**

- (1) The Office of Professional Responsibility supports the IRS's strategy to enhance enforcement of the tax law by ensuring that tax professionals adhere to tax practice standards and follow the law. OPR is the governing body responsible for interpreting and applying the Regulations Governing Practice before the Internal Revenue Service (Circular 230).
- (2) OPR addresses behavior that is willful, reckless or incompetent. OPR's mission is to educate and reach out to people who practice before the IRS and who are subject to Circular 230. OPR has jurisdiction over practice by attorneys, certified public accountants, enrolled agents, enrolled actuaries and appraisers. OPR does not regulate unenrolled preparers. Any matters of misconduct on the part of an unenrolled preparer should be referred to the local RPC for consideration and resolution.
- (3) SB/SE and LB&I employees should send referrals to the OPR for disreputable conduct and incompetence involving attorneys, certified public accountants, enrolled agents, enrolled actuaries and appraisers. Examples of misconduct under Circular 230 that may warrant a referral to OPR are found at IRM 4.1.10.8, *Referrals to the Office of Professional Responsibility*. SB/SE employees may send referrals to OPR after they take Title 26 enforcement actions (preparer penalties). Detailed information on referrals to OPR may be found in IRM 4.1.10.8, *Referrals to the Office of Professional Responsibility*, and IRM 4.11.55.4.2, *Referral to the Office of Professional Responsibility (OPR)*. Examiners should review IRM 4.1.10.8 and may consult with the Area Return Preparer Coordinator (RPC) when making OPR referrals.

Note: Send a copy of the referral for informational purposes to your Area's RPC.

Note: RPCs do NOT need to approve referrals to OPR.

- (4) Form 8484, *Suspected Practitioner Misconduct Report for the Office of Professional Responsibility*, is the form used to make a referral to OPR. Managerial approval of Form 8484 is not required. OPR will provide guidance and feedback to field/agency sources regarding essential referral criteria for each relevant Circular 230 provision.

Note: IRC 6694(b) penalties are mandatory referrals to OPR.

- (5) For IRC 6694(b), these mandatory referrals are made to OPR in matters where preparer penalties are asserted when there is willful or reckless conduct.

- (6) The OPR web site has a searchable database containing the names of all the individuals currently under suspension or disbarment.
- (7) Form 14624, *Office of Professional Responsibility (OPR) Referral*, is used for referrals from OPR to SB/SE and LB&I.
- (8) The Examiner will take the following steps when they receive a Form 14624 referral case from OPR: Within 45 days of receipt from OPR, the examiner will complete Part V of Form 14624 and return it to the OPR then take the following actions.

If the referral is surveyed, complete the following:

- Form 1900, *Income Tax Survey After Assignment*, with managerial concurrence,
- Notify OPR of Survey. Forward Form 14624 and a copy of Form 1900 to OPR,
- Close case file.

If an examination is conducted:

- Complete Part III of Form 14624,
- Return Form 14624 to OPR prior to the case closing from the group.

4.11.51.7.4
(09-23-2016)
**Lead Development
Center Referrals**

- (1) The SB/SE Lead Development Center (LDC):
 - receives, identifies and develops leads on individuals and entities that promote or aid in the promotion of abusive tax schemes and/or abusive tax return preparers,
 - authorizes civil investigations when necessary,
 - evaluates and develops information from internal and external sources.

The LDC is responsible for the approval of all SB/SE IRC 6700 and IRC 6701 investigations of promoters/preparers. The LDC coordinates with Criminal Investigation, Counsel and the Department of Justice (DOJ) to ensure that appropriate penalties and/or sanctions are pursued when warranted, and provides field support for ongoing investigations.

- (2) The LDC authorizes investigations into potentially abusive tax return preparers as well as promoters of abusive tax schemes. Authorized investigations are assigned to specially trained examiners through the Abusive Transaction Issues Area PSP Coordinator. A definition of abusive transactions can be found in IRM 4.32.2.2, *Abusive Transactions Defined*.
- (3) To report suspected promoters of illegal tax schemes or abusive tax return preparers, e-mail a completed Form 14242, *Report Suspected Abusive Tax Promotions or Preparers*, as well as any available documentation regarding the promotion or activity to *LDC. You can also mail or fax the information to:

IRS Lead Development Center
Stop MS5040
24000 Avila Road
Laguna Niguel, CA 92677-3405
Fax: 877-477-9135

4.11.51.7.5
(09-23-2016)

**Criminal Investigation
Referrals**

- (1) If a tax return preparer fraud referral to Criminal Investigations is considered, contact your local Return Preparer Coordinator (RPC) and Fraud Technical Advisor (FTA) to discuss the suspected return preparer fraud.
- (2) Some examples of return preparer fraud include:
 - Inflating income, deductions, credits, or withholding without the taxpayer's knowledge
 - Diverting refunds into the bank account of the return preparer
- (3) Referrals to Criminal Investigation (CI) can be made on Form 2797, *Referral Report of Potential Criminal Fraud Cases*. Examiners should develop the issue to establish firm indicators of fraud/willfulness, including, but not limited to:
 - A description of the firm indications/ willfulness
 - Taxpayer's explanation of the firm indications/ willfulness
 - The estimated criminal liability
- (4) If the criminal referral is declined, or if the criminal case is resolved, examiners should retain a copy of the related taxpayer's report (Form 4549) and relevant workpapers so the IRC 6694 civil return preparer penalties may be pursued.. See IRM 25.1.3.6, *Return Preparers*, IRM 25.1.2.9, *Return Preparer Fraud*, IRM 25.24, *Return Preparer Misconduct Program*, and *Return Preparer Misconduct* , for additional information.

4.11.51.8
(09-23-2016)

**Return Preparer
Misconduct**

- (1) Examiners should be alert to unscrupulous tax return preparers. Unscrupulous tax return preparers may alter tax data and/or misdirect a portion or all of a refund. The IRS has established a Policy Statement (P 25-2) per IRM 1.2.24, *Servicewide Policies and Authorities - Policy Statements for Special Topics*, that covers procedures for victims of tax return preparer misconduct.
- (2) If an examiner is made aware of tax return preparer misconduct by a taxpayer, they will take actions to correct the taxpayer's account. Please see IRM 25.24, *Return Preparer Misconduct Program*, for more information.

4.11.51.9
(09-23-2016)

**Power of Attorney
Rights and
Responsibilities**

- (1) See IRM 4.11.55, *Examining Officers Guide (EOG)*, *Power of Attorney Rights and Responsibilities*, for uniform guidance to employees who interact with representatives and/or who receive and inspect Form 2848, *Power of Attorney and Declaration of Representative (POA)*, Form 8821, *Tax Information Authorization (TIA)*, and similar documents.