



MANUAL TRANSMITTAL

Department of the Treasury
Internal Revenue Service

5.20.3

JANUARY 12, 2021

EFFECTIVE DATE

(01-12-2021)

PURPOSE

- (1) This transmits revised IRM 5.20.3, Abusive Tax Avoidance Transactions, Third-Party Contacts.

MATERIAL CHANGES

- (1) IRM 5.20.3.1 updated to include internal controls under Program Scope and Objectives.
- (2) IRM 5.20.3.2 now contains subsection, Third-Party Contacts, formerly found in IRM 5.20.3.1.
- (3) IRM 5.20.3.2(3) updated to include provisions of the Taxpayer First Act.
- (4) IRM 5.20.3.3 now contains subsection, Pre-assessment Investigations, formerly found in IRM 5.20.3.1.1.
- (5) IRM 5.20.3.3(1) added guidance for revenue officer to verify that third-party notice period is still valid.
- (6) IRM 5.20.3.4 now contains subsection, Promoter/Preparer Investigations, formerly found in IRM 5.20.3.1.2.
- (7) IRM 5.20.3.4(1) added Letter 3164N to the list of letters that may be issued by Examination.
- (8) IRM 5.20.3.4(2) updated IRM citations.
- (9) IRM 5.20.3.5 now contains subsection Trust Cases, formerly found in IRM 5.20.3.1.3.
- (10) Editorial updates were made throughout this section for clarity and to update citations or references.

EFFECT ON OTHER DOCUMENTS

This material supersedes IRM 5.20.3, Third-Party Contacts, dated 3-10-2016.

AUDIENCE

SB/SE Collection employees

Ronald Takakjy
Acting Director, Collection Policy
Small Business/Self-Employed

5.20.3

Third Party Contacts

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5.20.3.1
(01-12-2021)
Program Scope and Objectives

- (1) **Purpose.** This IRM provides guidance to Field Collection employees for making third-party contacts in Abusive Tax Avoidance Transactions (ATAT) cases.
- (2) **Audience.** The audience is revenue officers in SB/SE Field Collection.
- (3) **Policy Owner.** Director, Collection Policy, SB/SE.
- (4) **Program Owner.** Collection Policy, SB/SE, Global Strategic Compliance, is the program owner of this IRM.
- (5) **Primary Stakeholders.** The primary stakeholders are SB/SE Field Collection and SB/SE Lead Development Center (LDC).
- (6) **Program Goals.** While it is the IRS's practice to obtain information relating to a liability or collectibility determination directly from the taxpayer whenever possible, there are situations when IRS employees must contact third parties. By following the procedures in this IRM, employees will be able to balance the interests of taxpayers (reputation and business relationships) and third parties (privacy) with those of the IRS (effective and efficient tax administration).

5.20.3.1.1
(01-12-2021)
Background

- (1) Third-party contacts by IRS personnel in connection with determining and collecting tax from taxpayers are governed by disclosure regulations as well as by certain notice and reporting requirements.

5.20.3.1.2
(01-12-2021)
Authority

- (1) The IRS has been delegated the responsibility to administer and enforce the Internal Revenue Code.

5.20.3.1.3
(01-12-2021)
Responsibilities

- (1) The Director, Collection Policy is the executive responsible for the policy and procedures to be employed by Collection personnel.
- (2) Field Collection group managers and territory managers are responsible for ensuring compliance with the guidance and procedures described in this IRM.
- (3) Employees who make third-party contacts are responsible for following these procedures.

5.20.3.1.4
(01-12-2021)
Program Management and Review

- (1) Program Reports:
 - a. When IRS personnel document a third-party contact, the information is captured in the Third-Party Contact Database. This information is provided to taxpayers upon request.
- (2) Reviews:
 - a. Collection Policy conducts ATAT program reviews as necessary to verify compliance with IRM requirements and to address Treasury Inspector General for Tax Administration/General Accounting Office findings.
 - b. Case reviews are conducted by group managers and National Quality reviewers to ensure compliance with this IRM.
 - c. Operational reviews are conducted by the territory manager and area director annually to evaluate program delivery and conformance to administrative and compliance requirements.

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5.20.3.1.5
(01-12-2021)

Program Controls

- (1) The Third-Party Contact Database is maintained within IDRS, and it is subject to the same access controls and permissions governing IDRS.

5.20.3.1.6
(01-12-2021)

Terms and Acronyms

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

Acronym	Definition
ATAT	Abusive Tax Avoidance Transaction
CI	Criminal Investigation
LDC	Lead Development Center
RRA 1998	Restructuring and Reform Act of 1998
TBOR	Taxpayer Bill of Rights

5.20.3.1.7
(01-12-2021)

Related Resources

- (1) Additional information and guidance on third-party contacts can be found in the following IRM sections.
 - a. See IRM 25.27.1, Third-Party Contact Program, for servicewide guidance on third-party contact notice and reporting provisions.
 - b. See IRM 5.1.1.12, Third Party Contacts, for Collection guidance on third-party contacts.
- (2) Additional information and guidance on ATAT collection issues can be found in the following IRM sections.
 - a. See IRM 5.20.1 through 5.20.12 for additional information on ATAT collection issues.
 - b. See IRM Part 5 for additional information on general collection issues.
- (3) The IRS adopted the Taxpayer Bill of Rights (TBOR) in June 2014. Employees are responsible for being familiar with and acting in accordance with taxpayer rights. See IRC 7803(a)(3), Execution of Duties in Accord with Taxpayer Rights. For additional information about the TBOR, see <https://irssource.web.irs.gov/Lists/General%20News/DispItemForm.aspx?ID=126>.

5.20.3.2
(01-12-2021)

Third-Party Contacts

- (1) Internal Revenue Service Restructuring and Reform Act of 1998 (RRA 98) created IRC 7602(c), Notice of Contact of Third Parties, to require that before Service employees initiate contact with third parties for the determination or collection of a taxpayer's tax liability, the taxpayer must be given reasonable notice in advance that third parties may be contacted. IRC 7602(c) also requires the Service to make a record of persons contacted and provide that record to the taxpayer upon the taxpayer's request.
- (2) The provisions of IRC 7602(c) must be followed prior to making a third-party contact on an ATAT case. Refer to IRM 25.27.1, Third-Party Contact Program, for general service wide guidance and IRM 5.1.1.12, Third Party Contacts, for guidance specific to Collection casework.

- (3) The Taxpayer First Act amended IRC Section 7602(c)(1) and is effective for notices provided, and contacts of third parties made after August 15, 2019. Publication 1 will no longer satisfy the advance notice requirement of IRC Section 7602(c)(1). In all cases involving third-party contact notices provided after August 15, 2019, or in which contacts with third parties will occur after August 15, 2019, a notice meeting the new requirements must be provided. Employees may not contact a third party until the 46th day following the date of the notice. If the contact time period established by any notice issued after August 15, 2019 has expired, or is about to expire, and there continues to be an intent to contact third parties a new notice must be issued to update the time period, not to exceed one year, for which a third-party contact may be made. The new notice may be issued prior to the expiration of the contact period specified in the original notice. See IRM 25.27.1, Third-Party Contact Program, for further information.
- (4) There is no exception to IRC 7602(c) third-party contact requirements for ATAT cases. The only exceptions to IRC 7602(c) third-party contact requirements are those referred to in IRM 25.27.1.3.2, Exceptions to IRC 7602(c) Notification Requirements. A pending criminal investigation is one of the exceptions under IRC 7602(c)(3). If a criminal investigation is pending, the revenue officer should contact Criminal Investigation (CI) prior to sending out a third-party notice if the taxpayer has not received this notification through the IRS notice stream. Consult with Counsel to determine if the collection investigation is also excluded from third-party notice requirements because of the pending criminal investigation.
- (5) Revenue officers may conduct third-party contacts that require special consideration while working ATAT cases in conjunction with an Examination investigation. These can include:
 - Pre-assessment investigations where Examination has requested collection assistance during the audit process.
 - When the revenue officer is assisting with the development of a promoter/preparer investigation.

5.20.3.3
(01-12-2021)
**Pre-assessment
Investigations**

- (1) When working a pre-assessment investigation where Examination has requested revenue officer assistance during the audit process, the revenue officer is generally working under a notice of potential third-party contacts issued by the examiner. There is no systemic identification of Examination third-party notice in IDRS. In cases where a revenue officer is working concurrently with an examiner and there is no assessed liability against the taxpayer, the revenue officer should verify that the examiner has issued the required notice of potential third-party contacts and verify that the notice period is still valid.
- (2) An ATAT pre-assessment investigation is subject to the same third-party contact regulations as any other case where a liability has not yet been assessed.

5.20.3.4
(01-12-2021)
**Promoter/Preparer
Investigations**

- (1) Prior to the assessment of any penalties, Examination may request revenue officer assistance during promoter/preparer investigations. IRC 7602(c) requires that a promoter/preparer receive notice before any third-party contacts are made. When conducting a promoter/preparer investigation, the examiner provides Letter 3164P, Third-Party Notification for IRC 6700/6701 Investiga-

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tions, at the time the intent to make third-party contacts is determined. While Examination may have issued a Letter 3164E, Letter 3164N, or Letter 3164P at the onset of the investigation, revenue officers must recognize the limited scope of those letters. When a revenue officer is operating under the third-party notice issued by the examiner, he or she is only authorized to make contacts for the purpose identified in that notice. Once the purpose of the contact changes, for example promoter/preparer penalties are assessed and assigned, the revenue officer must ensure the taxpayer receives notice of third-party contacts specific to a collection investigation.

- (2) It is especially important for revenue officers to coordinate actions with Examination on promoter/preparer investigation cases. Promoter/preparer investigations may involve ongoing criminal investigations. IRC 7602(c)(3)(C) provides an exception to the third-party notice requirements with respect to a pending criminal investigation. This exception does not apply to any parallel civil investigation third-party contacts that CI has authorized regarding a promoter/preparer under investigation. See IRM 4.32.2.8.3.2, Third-Party Contacts, and IRM 4.32.2.8.3, Promoter Interviews, for additional information.

5.20.3.5 (01-12-2021) Trust Cases

- (1) When the taxpayer is a trust, special consideration must be given to determine who is the taxpayer and who is a third party. If a determination has not yet been made, initial correspondence should be sent directly to the trust.
- (2) Any contact made with the grantor must be treated as a third-party contact unless the grantor is the trustee. The grantor is the person by whom a grant or gift is made. The creator of a trust is generally referred to as the grantor of the trust. Other common titles are settler, creator, and trustor.
- (3) Contacts made with trustees are not third-party contacts. The trustee is a person who is charged with the fiduciary duty of management and control of the trust property for the benefit of the beneficiaries. Review Form 1041, U.S. Income Tax Return for Estates & Trusts, to determine who is designated as the trustee. Form 56, Notice Concerning Fiduciary Relationship, may also be reviewed.
- (4) Treas. Reg. 601.503(d)(5) imposes requirements on trustees and authorizes Service officials to request certain information that establishes the trustee's authority to act on behalf of the trust. The regulation states:

In the case of a taxpayer who has appointed a trustee, a Form 56, "Notice Concerning Fiduciary Relationship", should be filed by the trustee. If there is more than one trustee appointed, all should join unless it is shown that fewer than all have authority to act. Internal Revenue Service officials may require the submission of documentary evidence of the authority of the trustee to act. Such evidence may be either a copy of a properly executed trust instrument or a certified copy of extracts from the trust instruments, showing:

- a. *The date of the instrument;*
- b. *That it is or is not of record in any court;*
- c. *The names of the beneficiaries;*
- d. *The appointment of the trustee, the authority granted, and other information as may be necessary to show that such authority extends to Federal tax matters; and*

- e. *That the trust has not been terminated and the trustee appointed therein is still legally acting as such.*

In the event that the trustee appointed in the original trust instrument has been replaced by another trustee, documentary evidence of the appointment of the new trustee must be submitted.

