



MANUAL TRANSMITTAL

Department of the Treasury
Internal Revenue Service

5.20.4

SEPTEMBER 30, 2024

EFFECTIVE DATE

(09-30-2024)

PURPOSE

- (1) This transmits revised IRM 5.20.4, Abusive Tax Avoidance Transactions (ATAT), Summons Procedures.

MATERIAL CHANGES

- (1) IRM 5.20.4.1 Program scope and objectives and internal controls section added.
- (2) IRM 5.20.4. Editorial changes throughout the IRM.

EFFECT ON OTHER DOCUMENTS

IRM 5.20.4, dated 11-07-2016, is superseded.

AUDIENCE

SB/SE Collection employees.

Eric Slayback
Acting Director, Collection Policy
Small Business/Self-Employed

5.20.4
Summons Procedures

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5.20.4.1
(09-30-2024)
**Program Scope and
Objectives**

- (1) **Purpose:** This IRM provides guidance to Field Collection employees for summons activity related to Abusive Tax Avoidance Transaction (ATAT) cases.
- (2) **Audience:** The audience for this guidance 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.
- (6) **Program Goals:** The goal of the Abusive Tax Avoidance Transactions (ATAT) collection program is to identify and effect tax administration on cases involving complex transactions or multiple/layered entities intended to make it difficult to trace a taxpayer's assets and sources or transfers of income.
- (7) **Contact Information:** Email recommendations and suggested changes to this IRM to the Content Product Owner. The owner is indicated on the Product Catalog Information page which is found on the Forms/Pubs/Products IRM listing of the Media and Publications website.

5.20.4.1.1
(09-30-2024)
Background

- (1) Some abusive tax avoidance transactions (ATAT) encountered by revenue officers are designed to appear, and often are, quite complex and involve various transactions as well as numerous entities including trusts, partnerships, corporations, limited liability companies and offshore entities. These transactions and multiple or layered entities are often used by a taxpayer to make it difficult to identify and locate assets or income sources.
- (2) Research and investigation of ATAT cases does not entail techniques or tools unique to ATAT casework; however, some techniques are more commonly applied, such as use of the collection summons to follow income flow or to determine nominees, and nominee/alter ego/transferee relationships regarding title to assets.
- (3) Potential fraud indicators may be present in ATAT cases. Contact your local fraud enforcement advisor, when appropriate.
- (4) Research to identify the nature of the promotion or transaction used by a taxpayer is important in developing an effective case strategy for resolution of ATAT cases.
- (5) Research prior to contact is essential in ATAT cases. Guidance on conducting an initial analysis is located in IRM 5.1.10, Taxpayer Contact. Additional research may be necessary due to the complexity of an ATAT case. Because the goal of ATAT schemes is often to disguise the taxpayer's beneficial ownership of assets, developing a complete and accurate financial picture of a taxpayer participating in an abusive scheme is crucial.
- (6) Awareness of taxpayer rights is remains important in ATAT case work. Taxpayer rights, as identified in Pub 1, Your Rights as a Taxpayer, are addressed in IRM 5.1.9, Collection Appeal Rights, and throughout IRM Part 5.

5.20 Abusive Tax Avoidance Transactions (ATAT)

5.20.4.1.2 (09-30-2024) **Authority**

- (1) The following authorities provide the basis for these guidelines:
 - 26 U.S. Code 6103, Confidentiality and disclosure of returns and return information, known as Internal Revenue Code (IRC) 6103.
 - IRC 6304, Fair tax collection practices.
 - IRC 7602(c), Examination of books and witnesses, Notice of contact of third parties.
 - Section 1206 of the Taxpayer First Act.
 - IRM 1.2.65, Servicewide Policies and Authorities, Small Business/Self Employed Division Delegations of Authority-SB/SE Functional Delegations Orders-Collection.

5.20.4.1.3 (09-30-2024) **Roles and Responsibilities**

- (1) The Director, Collection Policy is the executive responsible for the policies and procedures to be employed by Field Collection personnel.
- (2) Field Collection group managers and Field Compliance Managers (FCM)/Territory Managers (TM) are responsible for ensuring compliance with the guidance and procedures described in this IRM.
- (3) Employees assigned ATAT cases for investigation are responsible for following these procedures.

5.20.4.1.4 (09-30-2024) **Program Management and Review**

- (1) Program Reports:
 - Management utilizes management information reports from the Integrated Collection System (ICS) and ENTITY systems to monitor and track timely and appropriate case actions. ICS contains unique case sub-codes to identify ATAT cases. The ENTITY database also contains queries to assist in the identification of ATAT cases.
 - Reports from the Embedded Quality Review System (EQRS) measure program consistency, effectiveness in case actions and compliance with policy and procedures. Trends from these reports are used to recommend improvements where necessary when errors are identified. Reports from EQRS provide management information used in guiding revenue officers to take timely, effective, and appropriate case actions.
- (2) Program Effectiveness:
 - Collection Policy performs ATAT program reviews as necessary to verify compliance with IRM requirements and address Treasury Inspector General for Tax Administration (TIGTA) and Government Accountability Office (GAO) audit findings.
 - Case reviews are performed by group managers and National Quality reviewers to ensure compliance with this IRM.
 - Operational reviews are performed by the Field Compliance Managers (FCM)/Territory Managers (TM) and area director annually to evaluate program delivery and conformance to administrative and compliance requirements.

5.20.4.1.5 (09-30-2024) **Program Controls**

- (1) Field Collection managers perform program controls by performing case consultations, reviews, employee observations and security reviews. IRM 1.4.50, Collection Group Manager, Territory Manager and Area Director Operational Aid, communicates responsibility for management to implement and monitor required internal controls. The Integrated Collection System, ENTITY Case

Management System and Embedded Quality System provide management with case access and data to monitor internal controls.

- (2) Management information reports from the Integrated Collection System (ICS) and ENTITY systems monitor and track timely and appropriate case actions. ICS contains unique case sub-codes to identify ATAT cases. The ENTITY database also contains queries to assist in the identification of ATAT cases.
- (3) Reports from the Embedded Quality Review System (EQRS) to measure program consistency, effectiveness in case actions and compliance with policy and procedures. Trends from these reports are used to recommend improvements where necessary when errors are identified. Reports from EQRS provide management information used in guiding revenue officers to take timely, effective, and appropriate case actions.

5.20.4.1.6 (09-30-2024)

Terms, Acronyms and Definitions

- (1) The following terms and acronyms are used in this chapter:

Acronym	Definition
ATAT	Abusive Tax Avoidance Transactions
EQRS	Embedded Quality Review System
GAO	Government Accountability Office
ICS	Integrated Collection System
IDRS	Integrated Data Retrieval System
IRC	Internal Revenue Code
TIGTA	Treasury Inspector General for Tax Administration

5.20.4.1.7 (09-30-2024)

Related Resources

- (1) The following is a list of related IRM resources:

IRM Resources
IRM 5.1.10, Taxpayer Contact
IRM 5.1.12, Cases Requiring Special Handling
IRM 5.1.18, Locating Taxpayers and their Assets
IRM 5.17.6, Summonses
IRM 5.20.3, Third Party Contacts
IRM 25.5, Summons Handbook
IRM 25.27.1, Third Party Contact Program

- (2) Web Resources are found on *Abusive Tax Avoidance Transactions Knowledge Base*.

5.20.4.2
(09-30-2024)
**Summons Procedures
Related to ATAT
Collection Work**

- (1) This IRM section addresses summons issues that are commonly found in Abusive Tax Avoidance Transactions (ATAT) cases. ATAT case work often requires the use of third-party summonses to investigate and establish ownership of assets and income streams.
- (2) When serving a summons on a taxpayer or third party in collection cases involving ATAT issues, follow procedural guidance outlined in IRM 25.5, Summons Handbook, and IRM 5.17.6, Summonses, for basic legal concepts regarding the use and enforcement of administrative summonses. Managerial approval is required on all third-party summonses. See IRM 25.5.1.2.3 , Authority to Issue Summons Requiring Approval (except **John Doe** Summons), for additional information.
- (3) The requirements of IRC 7602(c), Notice of contact of third parties, must be met prior to issuing a summons to a third party. See IRM 25.27.1, Third Party Contacts - Third Party Contact Program, for procedural requirements and exceptions.
- (4) A third-party summons can be served to obtain information from any person deemed proper, including, but not limited to, banks and other financial institutions, real estate and escrow companies, internet access and service providers (to the extent allowed by the Electronic Communications Privacy Act of 1986), e-commerce entities, utility, or other service organizations, and to obtain the testimony of trustees and other fiduciaries. IRM 25.5.2 Exhibits provide specific wording to include on the body of Form 2039, depending on the type of information needed. Additional information that may be helpful in preparing Form 2039 can be accessed on the Collection Summons Knowledge Base at <https://irs.gov.sharepoint.com/sites/ETD-KMT-KB053>.
- (5) Coordination with Examination -
 1. In cases where a revenue officer is working concurrently with an examiner on an investigation and no assessment has been made, the revenue officer must ensure a proper Letter 3164, Third Party Contact Letter, has been issued by the examiner prior to issuing a third party summons. Refer to IRM 5.20.3, Third Party Contacts.
 2. When the revenue officer is assigned a balance due account and there is a concurrent Examination assignment, coordinate summonses to avoid summoning records that are already in the possession of IRS employees.
 3. **Summoned records can be shared between Collection and Examination in most cases.** However, any summons issued for collection purposes should be limited in focus to materials or testimony related to collecting the tax. For instance, when a collection summons requests information regarding a taxpayer's customers, the focus should be on types of customer records and time periods for these records that may reflect a current levy source for payment of the taxpayer's assessed, unpaid, taxes.
- (6) If there are existing unpaid assessments, a summons for information can be issued if the requested information is to aid in the collection of the assessment. IRC 7602(d) limits the authority of the IRS to issue summonses when there is a Department of Justice referral, so ensure coordination with Examination and Criminal Investigation (CI). The summoned information obtained can be shared and used by other divisions of the IRS in most cases but there are exceptions.

See IRM 25.5.6.5.2, Sharing Information Obtained by a Collection Summons With IRS Personnel Conducting Examinations or Criminal Investigations, for a detailed explanation.

- (7) ATAT taxpayers may raise a defense against an issued summons citing their rights against self-incrimination under the Fifth Amendment to the Constitution. This defense is not necessarily applicable in every case and when raised, the revenue officer should contact Area Counsel for guidance on the application of the constitutional argument to a specific situation. See IRM 5.17.6.10 , Constitutional Defenses, for additional discussion of constitutional defenses.
- (8) Taxpayers may raise other privilege defenses against an issued summons. Contact Area Counsel through Advisory on the application of such privilege claims. See IRM 5.17.6.2 through IRM 5.17.6.16.
- (9) A taxpayer or its representative may request to make a recording of the proceeding. Advance notice must be given at least 10 calendar days prior to the proceeding and is restricted to an audio recording. The revenue officer must also record the meeting. See IRM 5.1.12.3, Recording Taxpayer Interviews , for procedure.
- (10) The exception to notice requirements for a third-party summons issued to aid in collection of an assessed liability generally includes summonses issued to investigate a fraudulent conveyance or nominee/alter ego situation. Summonses issued to determine if transferee liability should be asserted are not exempt from third party summons notice requirements. See IRM 25.5.6.5.1, Scope of the Exception For Summonses Issued in Aid of Collection, for additional information.
- (11) The revenue officer should document the case file with the facts that support the position that a nominee or alter ego situation exists. The documentation should clearly state the nexus relationship that exists between the taxpayer and the information summoned. If there is a question regarding nexus, contact Area Counsel.

