



# MANUAL TRANSMITTAL

Department of the Treasury  
Internal Revenue Service

4.11.51

OCTOBER 30, 2020

## EFFECTIVE DATE

(10-30-2020)

## PURPOSE

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

## MATERIAL CHANGES

- (1) The following material changes have been made since the prior revision:

IRM Reference	Description of Change
4.11.51.1	Subsection title changed from References to Program Scope and Objectives. Subsections added to address program background, authority, responsibilities, program reports, acronyms, terms, and related resources.
4.11.51.1.1	Content previously contained in IRM 4.11.51.2 regarding an overview of the Return Preparer Program has been moved to IRM 4.11.51.1.1.
4.11.51.3	Reference to Return Preparer Program replaced with Program Action Case. Paragraph order modified to improve readability.
4.11.51.3.3	Content wording modified to clarify what actions should be considered when examiners discover a ghost preparer.
4.11.51.3.4	Subsection title changed from Representation Overview to Representation Overview - Unenrolled Return Preparers. Paragraph added to define Unenrolled Return Preparer.
4.11.51.4	Content wording modified to include consideration of IRM 4.10.5.4.1, Analysis of Related and Spin-Off Returns.
4.11.51.5	Duplicate content removed. References to the Exam third-party contact IRM 4.11.57 were replaced with the Servicewide third-party contact IRM 25.27.
4.11.51.6.1	Updated subsection title to better describe content. Added paragraph (4) to provide instructions to specialty exam.
4.11.51.6.1.1	Subsection added to provide instructions to RPCs when they discover preparers who are non-filers or otherwise not current in their personal tax compliance. Content added to comply with recommendation from TIGTA Audit Number 201830039.
4.11.51.6.3	Content wording modified to clarify when a referral to Office of Professional Responsibility (OPR) is required. Content wording modified to clarify the steps an examiner must take when they receive a referral from OPR.
4.11.51	Minor editorial changes have been made throughout this IRM. Website addresses, legal references, and IRM references were reviewed and updated as necessary.

## **EFFECT ON OTHER DOCUMENTS**

This IRM supersedes IRM 4.11.51 dated September 23, 2016.

## **AUDIENCE**

Examination personnel in SB/SE and LB&I.

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Small Business/Self-Employed

4.11.51

Return Preparer Program

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4.11.51.1  
(10-30-2020)  
**Program Scope and  
Objectives**

- (1) *Purpose:* This IRM section serves as a reference guide on Return Preparer Program procedures for examiners.
- (2) *Audience:* These procedures apply to all SB/SE and LB&I examiners.
- (3) *Policy Owner:* The Director, Examination - Field and Campus Policy, under the Director, Headquarters Examination.
- (4) *IRM Owner:* Field Examination Special Processes, under the Director, Examination - Field and Campus Policy.
- (5) *Primary Stakeholders:* SB/SE and LB&I examiners.
- (6) *Contact Information:* To recommend changes or make any other suggestions related to this IRM section, see IRM 1.11.6.6, Providing Feedback About an IRM Section - Outside of Clearance.

4.11.51.1.1  
(10-30-2020)  
**Background**

- (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 - 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.

4.11.51.1.2  
(10-30-2020)  
**Authority**

- (1) Authority to administer the Return Preparer Program includes, but is not limited to, the following:
  - Treas. Reg. 1.6695-1, Other assessable penalties with respect to the preparation of tax returns for other persons (Link: 26 CFR 1.6695-1)
  - Treas. Reg. 301.7602-2, Third party contacts (Link: 26 CFR 301.7602-2)
  - Treas. Reg. 301.7701-15, Tax return preparer (Link: 26 CFR 301.7701-15)
  - IRM 1.2.65.3.5, SBSE 1-23-17, Authority to Request and Inspect Preparer Records
  - 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

4.11.51.1.3  
(10-30-2020)  
**Responsibilities**

- (1) The Director, Headquarters Examination, is the executive responsible for providing policy and guidance for Field employees and ensuring consistent application of policy, procedures, and tax law to effect tax administration while protecting taxpayers' rights. See IRM 1.1.16.3.5, Headquarters Examination, for additional information.
- (2) The Director, Examination - Field and Campus Policy, reports to the Director, Headquarters Examination, and is responsible for the delivery of policy and guidance that impacts the Field Examination process. See IRM 1.1.16.3.5.1, Field and Campus Policy, for additional information.
- (3) Field Examination Special Processes (FESP), under the Director, Examination - Field and Campus Policy, is the group responsible for providing oversight and policy and procedural guidance on specialized examination processes to SB/SE Field examiners and group managers. See IRM 1.1.16.3.5.1.2, Field Exam Special Processes.

4.11.51.1.4  
(10-30-2020)  
**Program Reviews**

- (1) Periodic program reviews are conducted by FESP to:
  - Assess the effectiveness of specific programs within Examination or across the organization,
  - Determine if procedures are followed,
  - Validate policies and procedures, and
  - Identify and share best/proven practices.

4.11.51.1.5  
(10-30-2020)  
**Acronyms**

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

Acronym	Definition
AFSP	Annual Filing Season Program
AIMS	Audit Information Management System
CFR	Code of Federal Regulations
CI	Criminal Investigation
DOJ	Department of Justice
ESAM	External Services Authorization Management
IDRS	Integrated Data Retrieval System
LB&I	Large Business and International
LDC	Lead Development Center
OPR	Office of Professional Responsibility
PAC	Program Action Case
POA	Power of Attorney
PSC	Preparer Steering Committee
PSP	Planning and Special Programs

Acronym	Definition
PTIN	Preparer Tax Identification Number
RPC	Return Preparer Coordinator
RPO	Return Preparer Office
RPP	Return Preparer Program
SB/SE	Small Business/Self-Employed

4.11.51.1.6  
(10-30-2020)

(1) The following table lists commonly used terms and associated definitions referenced throughout this IRM:

#### Terms

Term	Definition
Tax Return	A return (including an amended or adjusted return) filed by or on behalf of a taxpayer reporting the liability of the taxpayer for tax under the Code, if the type of return is identified in published guidance in the Internal Revenue Bulletin. A tax return also includes any information return or other document identified in published guidance in the Internal Revenue Bulletin and that reports information that is or may be reported on another taxpayer's return under the Code if the information reported on the information return or other document constitutes a substantial portion of the taxpayer's return.
Tax Return Preparer	Any person who prepares for compensation, or who employs one or more persons to prepare for compensation, all or a substantial portion of any tax return or any claim for refund of tax under the Internal Revenue Code.

4.11.51.1.7  
(10-30-2020)

(1) The following table lists related resources which contain additional guidance examiners may reference regarding the Return Preparer Program:

#### Related Resources

Resource	Title
IRM 1.2.1.16.1	Policy Statement 25-2, Return Preparer Misconduct
IRM 4.1.10	Return Preparer Program Coordinator
IRM 4.8.10	Notice of Employment Tax Determination Under IRC 7436
IRM 4.1.10.2.1	Preparer Steering Committee - SB/SE
IRM 4.10.3	Examination Techniques
IRM 4.11.55	Power of Attorney Rights and Responsibilities
IRM 4.32.2	The Abusive Transactions (AT) Process
IRM 11.3.21	Investigative Disclosure
IRM 20.1.6	Preparer, Promoter, Material Advisor Penalties

Resource	Title
IRM 20.1.6.6	Program Action Cases Overview
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 Contact Program
Rev. Proc. 81-38	Limited Practice Without Enrollment
Rev. Proc. 2014-42	Annual Filing Season Program

4.11.51.2  
(09-23-2016)  
**Return Preparer  
Coordinator**

- (1) The 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
  - Issues involving Powers of Attorney
  - Assistance in obtaining information on a 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 RPO, OPR 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.

4.11.51.3  
(10-30-2020)  
**Noncompliant Return  
Preparers Overview**

- (1) 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 Treas. Reg. 301.7701-15 (Link: 26 CFR 301.7701-15). All tax return preparers who are required to sign a return must properly identify themselves with their PTIN on all tax returns for which they were compensated for preparing.

**Note:** More than one individual can be the preparer of a taxpayer's tax return. Each preparer of the return generally must have a PTIN, but only one can sign and enter their PTIN. Per Treas. Reg. 1.6109-2(a)(1), Furnishing identifying number (Link: 26 CFR 1.6109-2(a)(2)), each filed return of tax or claim for refund of tax under the Internal Revenue Code prepared by one or more tax return preparers must include the identifying number of the tax return preparer required by Treas. Reg. 1.6695-1(b), Failure to sign return (Link: CFR 1.6695-1(b)) to sign the return or claim for refund. See Treas. Reg. 301.7701-15, Tax return preparer (Link: 26 CFR 301.7701-15) for definitions of "signing tax return preparer" "non-signing tax return preparer".



- (2) During the examination of a noncompliant return preparer, erroneously filed tax returns may be identified.
- (3) A Program Action Case (PAC) allows for the examination of returns prepared by a particular tax return preparer, if information indicates a pattern of noncompliance. Area Director approval is required prior to initiating a PAC to examine the returns of a tax return preparer's client(s).

4.11.51.3.1  
(09-23-2016)  
**Noncompliant Return  
Preparers**

- (1) The Area RPC gathers 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, for additional sources of preparer referrals.
- (2) The RPC maintains records 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.

4.11.51.3.2  
(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 4.11.51.6.1, SB/SE and LB&I Return Preparer Referrals, for submitting referrals regarding noncompliant preparers.

4.11.51.3.3  
(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 PTIN. Ghost preparers are defined as preparers who:
  - Omit any identification information - making the return appear 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:

- Preparer penalty in accordance with IRC 6695(b), Failure to sign return, and/or IRC 6695(c), Failure to furnish identifying number.
- A referral to the RPC (See: IRM 4.11.51.6.2.)

- (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.

4.11.51.3.4  
(10-30-2020)

**Representation  
Overview - Unenrolled  
Return Preparers**

- (1) Under Circular 230, Regulations Governing Practice before the Internal Revenue Service, and Treas. Reg. 601.502(b)(5)(iii) (Link: 26 CFR 601.502(b)(5)(iii)), an unenrolled preparer may only represent a taxpayer before Revenue Agents, Customer Service Representatives, or similar officers and employees of the Internal Revenue Service (including the Taxpayer Advocate Service) during an examination of the tax period covered by the tax return they prepared and signed (or prepared if there is no signature space on the form).
- (2) The IRS has a voluntary program called the Annual Filing Season Program (AFSP) that recognizes the efforts of non-credentialed 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 PTIN for the upcoming year and consent to adhere to the obligations in Treasury Department Circular 230, Subpart B, Section 10.51.
- (3) 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.
- (4) 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.

- (5) Examiners can determine if an unenrolled return preparer holds a current AFSP Record of Completion by searching the Directory of Federal Tax Return Preparers with Credentials and Select Qualifications on [www.irs.gov](http://www.irs.gov) (<http://irs.treasury.gov/rpo/rpo.jsf>).
- (6) Examiners can determine if an unenrolled return preparer holds a prior year AFSP Record of Completion by reviewing the Annual Filing Season Program (AFSP) Participants list located on the RPO webpage (<https://irssource.web.irs.gov/RPO/Pages/Home.aspx>).

4.11.51.3.5  
(10-30-2020)

**Program Action Case  
(PAC)**

- (1) When the information compiled by the RPC indicates a pattern of noncompliance with the returns prepared, a PAC may be initiated.

- (2) IRS can only identify returns prepared by a particular preparer if the preparer properly identified themselves on the return. Therefore, 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.
- (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 to initiate a PAC.
- (4) Upon concurrence, the RPC will obtain clearance from the LDC (IRM 4.1.10.3.4) and CI (IRM 4.1.10.3.3) to ensure there are no conflicts with an existing preparer 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 not approved by the Area Director, a PAC will not be initiated and no action will be taken.
- (6) If approved, the RPC will establish the cases on AIMS.

4.11.51.4  
(10-30-2020)  
**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 RPC. Examination employees should not send referrals to 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 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 personally tax compliant, the examination employee should discuss with the group manager and Area RPC the viability of examining the tax preparer's return or completing an information referral (See: IRM 4.10.5.4.1, Analysis of Related and Spin-Off Returns).

4.11.51.4.1  
(10-30-2020)

#### **IRC 6694 Penalties**

- (1) IRC 6694, Understatement of taxpayer's liability by tax return preparer, allows for the assertion of preparer penalties under the following subsections:
  - IRC 6694(a), Understatement due to unreasonable positions
  - IRC 6694(b), Understatement due to willful or reckless conduct
- (2) Examiners can find information on IRC 6694 in IRM 20.1.6, Preparer, Promoter, Material Advisor Penalties.
- (3) A referral to OPR is mandatory when IRC 6694(b) penalties are asserted.
- (4) A referral to OPR is discretionary when IRC 6694(a) penalties are asserted and should be discussed with your area RPC.

4.11.51.4.2  
(10-30-2020)

#### **IRC 6695 Penalties**

- (1) 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) All tax return preparers must have a PTIN or other prescribed identifying number that was applied for and received in the manner prescribed by the IRS in Treas. Reg. 1.6109-2(d) (Link: 26 CFR 6109-2(d)) and Notice 2011-6. If the PTIN is not present on the return in question, or is present but not active, the tax return preparer may be subject to a penalty under IRC 6695(c), Failure to furnish identifying number. Examiners should be aware of the following circumstances where a penalty may apply:
  - Multiple individuals using the same PTIN.
  - Not including the PTIN of the signing preparer in the paid preparer section of the tax return filed with the IRS.
  - The signing preparer is employed by a firm and they fail to include the firm's EIN in the paid preparer section.
  - A PTIN not following the format of: nine (9) characters beginning with the letter P.
  - Use of the preparer's Social Security Number in lieu of a PTIN.

4.11.51.4.3  
(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.

4.11.51.5  
(10-30-2020)

#### **Third-Party Contacts**

- (1) IRC 6671, Rules for application of assessable penalties, treats preparer penalties as taxes. Therefore, when an examiner makes contact with someone other than the preparer to determine if the preparer is liable for a penalty, third-party notification may be required.
- (2) If a preparer's client(s) are examined for the purpose of determining whether the preparer is subject to a preparer penalty AND if the five factors found in the definition of Treas. Reg 301.7602-2(b) (Link: 26 CFR 301.7602-2(b)) are met, third-party contact procedures must be followed.
- (3) Contacts subject to IRC 7602(c) and Treas. Reg. 301.7602-2 (Link: 26 CFR 301.7602-2) 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.
- (4) For every third-party contact, the examiner must advise the third party (including clients of the preparer) before the conclusion of the initial interview that the IRS is required by law to provide their name to the preparer/taxpayer as a third-party contact. There is an exception to this notification if the third party client believes that notifying the preparer may result in reprisal against themselves or any person. The examiner should accept the third party's response at face value. The examiner may also make the reprisal determination based on the facts and circumstances of the case.

**Note:** In order to adhere to third-party contact procedures, examiners should advise clients of the preparer they were selected for audit as part of a preparer compliance review and ask if they fear reprisal (See: IRM 25.27.1.3.5, Reprisal Notification Procedures). Examiners should not disclose any more information regarding the preparer than is necessary to conduct the examination of the client.

- (5) If an IRS employee determines that providing the advance notice or a record of a specific contact to a taxpayer may result in a reprisal - an act of revenge or retaliation - against any person, refer to IRM 25.27.1.3.3, Reprisal, for instructions on completing Form 12175, Third Party Contact Report Form.

**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.

- (6) Refer to IRM 4.1.10.3, Program Action Cases Overview (PAC), for information on PACs.

**Note:** 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.

- (7) Refer to IRM 25.27.1, Third-Party Contact Program, for specific third-party contact guidance.

4.11.51.6  
(09-23-2016)  
**Return Preparer  
Referrals**

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

4.11.51.6.1  
(10-30-2020)  
**SB/SE and LB&I Return  
Preparer Referrals -  
Examiner  
Responsibilities**

- (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) Specialty Tax examiners should consult with their RPC for appropriate referral form and procedures.

4.11.51.6.1.1  
(10-30-2020)

**Non-Filer Return  
Preparer Referrals - RPC  
Responsibilities**

- (1) While performing their duties under IRM 4.1.10.1.1, Area Return Preparer Coordinator (RPC) Responsibilities, RPCs may encounter preparers who are non-filers or otherwise not current in their personal tax compliance. RPCs should research the preparer's activities to develop a non-filer referral on Form 5346, Examination Information Report, using the following tools and other available resources:
  - Integrated Data Retrieval System (IDRS) Command Code RPVUE – to determine number of returns prepared for each non-filed year to assist in approximating income.
  - External Services Authorization Management (ESAM) database – to determine if the preparer is also an Electronic Filing Identification Number (EFIN) holder and determine how many returns were transmitted for each non-filed year to assist in approximating income.
  - Return Preparer Database - PTIN Compliance, complaints that include clues to income, theft of refund, etc.
  - Accurant.
- (2) The Area RPC will forward Form 5346 and additional research to the Area PSP Information Referral Coordinator for processing.

4.11.51.6.2  
(10-30-2020)

**Return Preparer Office  
(RPO) Referrals**

- (1) SB/SE and LB&I examiners who encounter non-compliant preparers should consult with their manager regarding potential preparer penalties when appropriate. As it is more efficient to address the issue(s) while already engaged with the preparer, examiners 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 RPC for consideration. Form 14157 has instructions on when to use the form and when to send a referral to RPO.

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4.11.51.6.3  
(10-30-2020)  
**Office of Professional  
Responsibility (OPR)  
Referrals**

- (1) OPR supports the IRS 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. The OPR 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 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 in 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 4.11.55.5.1, Referral to the Office of Professional Responsibility (OPR). Examiners should review IRM 4.1.10.8 and may consult with the Area RPC when making OPR referrals.

**Note:** Send a copy of the referral to your Area's RPC for informational purposes. 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 required. OPR will provide guidance and feedback to field/agency sources regarding essential referral criteria for each relevant Circular 230 provision.
- (5) A referral to OPR is required when IRC 6694(b) 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 (<https://www.irs.gov/tax-professionals/search-for-disciplined-tax-professionals>).
- (7) Form 14624, Office of Professional Responsibility (OPR) Referral, is used for referrals from OPR to SB/SE and LB&I.
- (8) When an examiner receives a Form 14624 referral case from OPR, complete Part V of Form 14624 and return it to OPR within 45 days of receipt.
- (9) If the referral is surveyed:
  - Complete Form 1900, Income Tax Survey After Assignment, with managerial concurrence,
  - Forward Form 14624 and a copy of Form 1900 to OPR to notify them of the survey,
  - Close the case.
- (10) If an examination is conducted:

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

4.11.51.6.4  
(10-30-2020)

**Lead Development  
Center (LDC) Referrals**

- (1) The SB/SE 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.
- (2) The LDC is responsible for the approval of all SB/SE IRC 6700 and IRC 6701 investigations of promoters/preparers. The LDC coordinates with CI, Counsel and DOJ to ensure appropriate penalties and/or sanctions are pursued when warranted, and provides field support for ongoing investigations.
- (3) The LDC authorizes investigations of 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 4.32.2.3, Abusive Transactions Defined.
- (4) The public can report suspected promoters of illegal tax schemes or abusive tax return preparers by mailing or faxing a completed Form 14242, Report Suspected Abusive Tax Promotions or Preparers, as well as any available documentation regarding the promotion or activity to:

Internal Revenue Service

Lead Development Center Stop MS5040

24000 Avila Road

Laguna Niguel, CA 92677

EEFax: 877-477-9135

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4.11.51.6.5  
(10-30-2020)

**Criminal Investigation  
(CI) Referrals**

- (1) If a tax return preparer fraud referral to CI is considered, contact your local RPC and Fraud Enforcement Advisor 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 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 indicators/willfulness
  - Taxpayer's explanation of the firm indicators/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 examination 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, and IRM 25.24, Return Preparer Misconduct Program, for additional information.

4.11.51.7  
(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 1.2.1.16, Policy Statements for Special Topics, which 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.

4.11.51.8  
(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.

