



MANUAL TRANSMITTAL

Department of the Treasury
Internal Revenue Service

5.1.14

MAY 31, 2023

EFFECTIVE DATE

(05-31-2023)

PURPOSE

- (1) This transmits a complete revision to IRM 5.1.14, Collection Field Function Techniques and Other Assignments

MATERIAL CHANGES

- (1) IRM 5.1.14.1 : Revised title and added content to comply with the Internal Management Documents System, Internal Revenue Manual (IRM) internal control requirements.
- (2) IRM 5.1.14.2 : Updated section contents for clarity and expanded discussion of transferee liability under Internal Revenue Code Section 6901.
- (3) IRM 5.1.14.4 : Moved Performance Bond Provisions of the Miller Act to this new section to make room for the internal control requirements section.
- (4) Editorial changes made throughout to update text, references, and to conform to current IMD requirements.

EFFECT ON OTHER DOCUMENTS

This material supersedes IRM 5.1.14 dated March 8, 2011.

AUDIENCE

Small Business/Self-Employed Compliance Employees

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5.1.14

Field Collection Techniques and Other Assignments

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5.1.14.1
(05-31-2023)
Program Scope and Objectives

- (1) **Purpose:** This IRM provides procedures for recommending third party liabilities, and methods of collection from third parties.
- (2) **Audience:** This IRM is used by Collection employees developing and investigating cases where third party liabilities become an important factor for administrative and judicial collection. Primarily Civil Enforcement Advice and Support Operations (CEASO) staff or Field Collection Revenue Officers use this IRM when pursuing or assisting Counsel and the Department of Justice with affirmative judicial actions.
- (3) **Policy Owner:** Director, Collection Policy SBSE.
- (4) **Program Owner:** Collection Policy, SB/SE, Enforcement is the program owner of this IRM.
- (5) **Primary Stakeholders:** Field Collection, CEASO, and Chief Counsel. Other areas that are affected by these procedures or have input to the procedures include Appeals, the Taxpayer Advocate Service (TAS), and Department of Justice Attorneys.
- (6) **Program Goals:** Taxpayers sometimes try to thwart the collection of their liabilities by disguising and/or transferring property ownership. This IRM positions the revenue officer to identify and defeat these deceptions. In this IRM is a working knowledge of the third-party legal fundamentals and procedures that, when applied, may result in collecting the taxpayer's liability through a third party. revenue officers and advisors use these fundamentals to recognize the applicable theory and initiate appropriate action.

5.1.14.1.1
(05-31-2023)
Background

- (1) This section provides procedural guidance on the methods the United States can use to collect an unpaid liability where an initially liable person, e.g., a taxpayer (the "transferor"), has transferred property to a third party (the "transferee") prior to or after the liability to the United States is incurred.
- (2) Whenever action or litigation involving collection matters is pending or the institution of affirmative legal action to effect collection is being considered, revenue officers will mainly be investigators of facts. They will be required to prepare reports concerning any facts ascertained. The reviewers, approvers, and lawyers charged with the responsibility of handling the cases must rely on those facts and reports when making case decisions.

5.1.14.1.2
(05-31-2023)
Authority

- (1) A request, for institution of an administrative or legal proceeding to effect or assist in the collection of a tax, generally originates with an individual revenue officer within a Field Collection Area Director's organization.
 - Specific policies related to collection work start with IRM 1.2.1.6, Policy Statements for the Collecting Process.
 - Specific delegations of authority related to collection work are in IRM 1.2.2, Servicewide Delegations of Authority, and throughout IRM 1.2.65.3, SB/SE Functional Delegation Orders – Collection.
- (2) The authorities for the legal theories discussed in this IRM are found in the following United States Code and Regulation sections.

Table Listing Code and Regulations

U.S. Code Section	Regulation	Title
26 USC 368	no regulation	Definitions relating to corporate reorganizations
26 USC 6321	301.6321-1	Lien for taxes
26 USC 6323	301.6323(a)-1 thru 301.6323(j)-1	Validity and priority against certain person
26 USC 6324	301.6324-1	Special liens for estate and gift taxes
26 USC 6334(e)	301.6334-1	Property exempt from levy
26 USC 6501	301.6501(a)(1) thru 301.6501(o)(3)	Limitations on assessment and collection
26 USC 6502	301. 6502-1	Collection after assessment
26 USC 6601	301.6601-1	Interest on underpayment, nonpayment, or extensions of time for payment, of tax
26 USC 6672	301.6672-1	Failure to collect and pay over tax, or attempt to evade or defeat tax
26 USC 6901	301.6901-1	Transferred assets
26 USC 6902	301.6902-1	Provisions of special application to transferees
26 USC 7401	301.7401-1	Civil Actions by the United States, Authorization
26 USC 7402(a)	no regulation	Jurisdiction of district courts
26 USC 7403	301.7403-1	Action to enforce lien or to subject property to payment of tax
28 USC 1340	no regulation	District Courts;, Jurisdiction, Internal Revenue; Customs Duties
28 USC 1345	no regulation	United States as plaintiff
28 USC 3001	no regulation	Federal Debt Collection Procedure (FDCP), Applicability of chapter
28 USC 3003(b)(1)	no regulation	FDCP, Rules of construction
28 USC 3301	no regulation	FDCP, Fraudulent Transfers Involving Debts (FTID), Definitions
28 USC 3302	no regulation	FDCP, FTID, Insolvency
28 USC 3303(b)	no regulation	FDCP, FTID, Value for transfer or obligation
28 USC 3304	no regulation	FDCP, FTID, Transfer fraudulent as to a debt to the United States
28 USC 3306(b)	no regulation	FDCP, FTID, Remedies of the United States
28 USC 3307	no regulation	FDCP, FTID, Defenses, liability, and protection of transferee
31 USC 3713	no regulation	Priority of Government claims

5.1.14.1.3
(05-31-2023)**Roles and Responsibilities**

- (1) Director, Collection Policy is the executive responsible for the policies and procedures employed by Collection personnel.
- (2) Director, Field Collection, has executive oversight for all Field Collection programs.
- (3) Field Collection Area Directors, Territory Managers and Group Managers are responsible for ensuring compliance by Field personnel with these procedures.
- (4) Revenue officers are responsible for reading and implementing the procedures listed in this IRM.
- (5) CEASO advisors review and advise revenue officers on work relating to the guidance and procedures described in this IRM. They also ensure compliance with IRM guidance.
- (6) IRM 5.17.1, General Information, describes Counsel and revenue officer roles with suits.

5.1.14.1.4
(05-31-2023)**Program Management and Review**

- (1) **Program Effectiveness:** Field Collection Group Managers use Document 12359, Embedded Quality Job Aid Field Collection, to complete:
 - Annual case reviews IRM 1.4.50.5.2.2, Requirements for Annual Performance Case Reviews,
 - Completed case work IRM 1.4.50-2, Criteria for Review of Completed Work, and
 - eApproval recommendation reviews.
- (2) CEASO Group Managers use Document 12746, Embedded Quality Advisory - Litigation, and Document 12739, Embedded Quality Job Aid Advisory Lien Core, to complete:
 - Annual and case reviews IRM 1.4.53.4.7, Reviews, and
 - eApproval recommendation reviews for assignment.
- (3) National Quality Review System (NQRS) reviewers also review case work for certain attributes.

5.1.14.1.5
(05-31-2023)**Program Controls**

- (1) Management and review when pursuing a third-party liability varies with the type of action:
 - Initiating suit to establish a transferee liability requires Group Manager, CEASO, Territory Manager, and Counsel review and approval prior to forwarding the recommendation to the Department of Justice.
Note: Suits are individual to the case. The Collection employee provides a Narrative Report laying out the basis for the case identifying all pertinent facts. Narrative Reports are discussed in IRM 5.17.12, Investigations and Reports.
 - Initiating an Internal Revenue Code (IRC) 6901 assessment requires Group Manager review prior to forwarding the case to Exam Planning and Special Programs (PSP) for assessment.
Note: IRM 5.1.14.2.1, Report of Investigation of Transferee Liability, describes the preparation and presentation of the report. IRM

4.1.1.6.11.2, Collection Referrals-Form 3031, Report of Investigation of Transferee Liability, discusses the PSP review.

5.1.14.1.6
(05-31-2023)

(1) The table below provides terms and definitions applicable to this IRM.

Terms and Acronyms

Term Table

Terms	Definition
Surety	Party legally liable for the debt, default, or failure in duty of another
Transferee	Party to whom a transfer is made
Transferee Liability	Method of collecting an unpaid liability (tax or non-tax) from the transferee / property recipient
Transferee Liability at law	Transferee liability directly imposed by federal or state law or agreed to as part of a contract
Transferee Liability in equity	Transferee liability imposed by a court based on equity or fairness principles
Transferor	Party transferring property to another

(2) The table below provides acronyms and definitions as used in this IRM.

Acronym Table

Acronym	Definition
CEASO	Civil Enforcement Advice and Support Operations
CIP	Compliance Initiative Program
CDP	Collection Due Process
FDCPA	Federal Debt Collection Procedures Act of 1990
ICS	Integrated Collection System
IRS	Internal Revenue Service
IRC	Internal Revenue Code
IRM	Internal Revenue Manual
NFOI	Non Field Other Investigation
NFTL	Notice of Federal Tax Lien
PEO	Professional Employer Organization
PSP	Planning and Special Programs
SB/SE or SBSE	Small Business / Self-Employed Division
SNOD	Statutory Notice of Deficiency
TAS	Taxpayer Advocate Service
TBOR	Taxpayer Bill of Rights

Acronym	Definition
TFRP	Trust Fund Recovery Penalty
UCC	Uniform Commercial Code
UFCA	Uniform Fraudulent Conveyance Act
UFTA	Uniform Fraudulent Transfer Act
ULA	Uniform Laws Annotated
USC or U.S.C.	United States Code
UVTA	Uniform Voidable Transactions Act

5.1.14.1.7

(05-31-2023)

Related Resources

- (1) Listed below are resources for suits to establish a transferee liability.

Resources for Establishing a Transferee Liability

Location	Title
IRM 5.17.12.11	Fraudulent Transfers and Transferee and Other Third Party Liability
IRM 5.17.12.20.2.2.2	Additional Items for Setting Fraudulent Transfer Aside Based on Constructive Fraud
IRM 5.17.14	Fraudulent Transfers and Transferee and Other Third Party Liability.
IRM 25.3.2	Suits by the United States
Suit Forms	Form 4477
Knowledge Management web	<i>KM web page Suits-Resources/Examples</i>
Example Transferee Suit	<i>Example Transferee Liability (Estate Beneficiary) plus Assertion-v-Fiduciary</i>

- (2) Listed below are resources for assessing a transferee using IRC 6901.

Resources for Assessing Under IRC 6901

Location	Title
IRM 5.17.14	Fraudulent Transfers and Transferee and Other Third Party Liability
IRM 4.10.13.3	Transferor - Transferee Liability
IRM 4.8.9.17.5	Transferor-Transferee Liability and Fiduciary Liability Cases
IRM 4.11.52	Examining Officers Guide (EOG), Transferee Liability Cases
IRM 4.1.1.6.11.2	Collection Referrals-Form 3031, Report of Investigation of Transferee Liability
IRM 4.10.13.3.1.1	Referral From Collection Function
Form 3031	Report of Investigation of Transferee Liability

- (3) The Taxpayer Bill of Rights (TBOR) lists rights that already existed in the tax code, putting them in simple language and grouping them into 10 fundamental rights. Employees are responsible for being familiar with and acting in accord with taxpayer rights. See IRC 7803(a)(3), Execution of Duties in Accord with Taxpayer Rights. For additional information about the TBOR, see <https://www.irs.gov/taxpayer-bill-of-rights>, Taxpayer Bill of Rights (TBOR).

5.1.14.2
(05-31-2023)

**Transferee Liability and
Fraudulent Conveyances**

- (1) This Section discusses the ability of the United States to reach assets which may be or may have been disposed of by the taxpayer prior to assessment and which are or were not subject to the Federal tax lien.
- (2) IRM 5.17.14, Fraudulent Transfers and Transferee and Other Third Party Liability, contains detailed information on recognizing whether a fraudulent conveyance and transferee liability may exist and the recourse available to the United States in such situations. It also provides detailed transferee theory concepts based on when the property transfer occurs (i.e. pre-assessment and no statutory federal tax lien attachment, or post-assessment using statutory lien tracing).
- (3) There are three principal methods by which the United States may proceed where assets have been transferred in fraud of creditors.
- Suit to set aside a fraudulent transfer, see IRM 5.17.14.5.6.
 - Suit to establish transferee liability, see IRM 5.17.14.5.4.
 - Transferee liability by assessment and notice of deficiency under IRC 6901, see IRM 5.17.14.5.2 and IRM 5.17.14.5.3 for detailed information about IRC 6901 assessments and burden of proof required.
- (4) Of the above methods, assessments which can be obtained through notice of deficiency under IRC 6901 should be considered first.
- (5) IRC 6901 provides a procedure by which IRS may assess and collect unpaid taxes, penalties, and interest from a transferee. The liability may then be collected from any of the transferee's property. This approach is generally preferable when the value of the property has decreased since the transfer.
- (6) Assessments against a transferee can be made under IRC 6901 for a transferor's:
- income tax, estate or gift tax, or
 - other taxes, such as employment taxes, if the transferee's liability arises out of the liquidation of a partnership or corporation, or a corporate reorganization under IRC 368(a).
- (7) The period of limitations for the assessment under 6901(c) of the liability of a transferee are:
- Initial Transferee: one year after the assessment period against the transferor ends.
 - Transferee of a Transferee: one year after the period for assessment against the preceding transferee ends, but not more than three years after the period for assessment against the transferor ends.

Note: IRC 6901 is strictly a procedural statute that does not by itself create any liability. The existence or extent of a transferee's or fiduciary's liability is determined by applicable state or federal law. Detailed procedures for

assessing transferee liability under IRC 6901 are discussed at IRM 5.17.14.5.1, Assessing Transferee and Fiduciary Liability.

- (8) Assessments under IRC 6901 are made by the Examination function. Revenue officers use Form 3031, Report of Investigation of Transferee Liability, to make a referral for transferee assessment.

5.1.14.2.1
(05-31-2023)
**Report of Investigation
of Transferee Liability**

- (1) The referral for transferee liability under IRC 6901 is based primarily on the facts developed and reported by the revenue officer. It is essential that the investigation be carefully and thoroughly conducted and the revenue officer's report be as complete and detailed as possible.
- (2) The revenue officer prepares Form 3031, Report of Investigation of Transferee Liability, and completes the following:
 - a. Attach schedules and explanatory and descriptive statements necessary for a clear and complete presentation of the facts.
 - b. Attach documentary evidence, beginning with the year of transferor's liability, of any nature which the revenue officer is able to secure in support of the determination of transferee liability.
 - c. Forward Form 3031 with attachments to the Group Manager.
- (3) The Group Manager examines the report of investigation to ensure that it is complete and that a proper basis exists for assertion of the transferee liability.
- (4) Upon agreement with the recommendation, the Group Manager will:
 - a. Sign and email Form 3031, with attachments, by memorandum to the appropriate Planning and Special Programs (PSP) coordinator contact in the Examination function. The PSP coordinator contact listing by state is located on Knowledge Management <https://portal.ds.irsnet.gov/sites/vl051/Lists/PSP%20Territory%20Managers/AllItems.aspx>.
 - b. Retain a copy.
 - c. Associate a copy with the transferor Bal Due case file.

5.1.14.2.2
(05-31-2023)
**Revenue Officer as
Coordinator of the
Collection Activity**

- (1) The revenue officer who initiated the assertion of the transferee assessment, or is assigned multiple transferee assessments initiated by Examination or sustained by Appeals, will act as coordinator of the collection activity.
- (2) Multiple transferee assessments initiated by Examination or sustained by Appeals will be identified by the coordinating revenue officer with the notation **Transferee assessments exceed transferor liability** in the Bal Due case history.

Note: The *concept is similar* to the cross referencing done with Trust Fund Recovery Penalty (TFRP) collections. However, there are no cross-reference transactions codes to cross apply funds, so even though these accounts are handled by non-masterfile, payment applications are not correctly reflected. When receiving payments on an IRC 6901 assessment case, work with CEASO and Counsel on application and cross-referencing of those payments.

Example: If three transferees each received transfers worth \$20,000 and the transferor's liability is \$15,000, then each transferee is liable for the entire

\$15,000 and not a mere pro rata share (\$5,000). The IRS may collect the liability from one, two, or all three of the transferees, subject to a total collection of \$15,000.

- (3) The revenue officer acting as coordinator (transferor revenue officer) will:
- Effect any required Bal Due account transfer.
 - Work with Counsel on the application of payments between the transferee and transferor.
 - Notify the holders of other related Bal Due accounts of credits to be considered in further collection of the assessed liability upon receipt of the information.
 - Ensure each payment is documented in the Integrated Collection System (ICS) histories to reflect the amount and source of payment, current total of payments received from each transferee, and current total outstanding balance.
 - Suspend collection in the event the total of payments received from all related Bal Due accounts equals the total assessed liability.
 - Work with Counsel to ensure that all Notice of Federal Tax Liens (NFTL) are released appropriately.

5.1.14.2.3
(05-31-2023)

**Revenue Officer
Transferee Procedures**

- (1) The revenue officer receiving a transferee assessment Bal Due account will proceed with all normal collection procedures.

Note: IRM 5.12.7.6 provides information on preparation and approval of special condition NFTL. IRM 5.12.7.6.3 provides information on transferee NFTL. IRM 5.12.6.3.12 provides information on IRC 6901 Transferee Collection Due Process (CDP) notification.

- (2) Notify the coordinating (transferor) revenue officer of the following:
- Receipt of full payment of the assessed liability by memorandum, stating the date paid and the amount paid.
 - Summary of installment payments received, stating the dates and amounts paid.
- Note:** A transcript of the account may be sent in lieu of a memorandum. This information will be furnished at 3-month intervals.
- Copy of Form 53, Report of Currently Not Collectible Taxes, when a module(s) is put into currently not collectible status.
 - Claim for Refund or Refund Litigation.

5.1.14.2.4
(05-31-2023)

**Abatements and
Refunds**

- (1) When the total amount collected exceeds the amount of the transferor's liability, the excess amount may be refunded provided a claim for refund is filed within the applicable statutory period.

Note: If payment is made by personal check, the abatement of any balance(s) of assessments will be held in abeyance until such check has cleared the bank on which drawn.

- (2) No abatement will be administratively made in those cases which are not involved in court proceedings unless the statutory period in which a refund claim may be brought has expired as to the transferee.

5.1.14.2.5
(05-31-2023)

**Disposition of Bal Due
Accounts Awaiting
Abatement**

- (1) Transferee Bal Due accounts which are not full paid may be abated because of full payment of a related Bal Due account.

Note: The application of payments between the transferee and transferor is *similar in concept* to the cross referencing done with TFRP collections. However, there are no cross-reference transactions codes to cross apply funds, so even though these accounts are handled by non-masterfile, payment applications are not correctly reflected. When receiving payments on an IRC 6901 assessment case, work with CEASO and Counsel on application and cross-referencing of those payments.

- (2) The revenue officer will:

- a. Prepare Form 3870 to request the abatement.
- b. Input a TC 470 CC 90 to close the revenue officer's inventory control.
- c. Notate the ICS case history with a description of the Bal Due accounts that have been paid, including date(s) of payment as well as including the expiration date of the statutory period for filing claim for refund by the person who has paid the liability.
- d. Transmit the closed physical file with the original approved Form 3870 to the CEASO Group Manager for the location where the controlling case is located.

Note: The file awaiting abatement is **not** transmitted with the Form 795 to closed files.

- (3) CEASO advisors will:

- a. Establish an NFOI on ICS, using time code 175, Transferee Assessment, no later than 7 calendar days of group receipt of the recommendation for abatement, to monitor the account.

Note: TC 470 CC 90 will reverse systemically after a period of time. The advisor must monitor for this occurrence and take steps to prevent re-issuance of a Bal Due module(s). The systemic reversal time period can be found in Document 6209 with the Section 11 TC 470 chart. IRM 5.1.15 contains additional information on adjustments.

- b. Establish a follow-up on the module to review the account for a No Activity indicator until the two-year limitation expires and the accounts are abated or otherwise settled.

If...	Then...
Claims for refund or abatement are filed by the transferee(s) within the two year statutory period	Suspend the liability on the transferor until the transferee's claim has been resolved, and the two year period for filing a refund suit has expired.
A claim has not been filed and the period for filing one has expired	Request abatement of the related Bal Due accounts by forwarding the Form 3870 (which should have been prepared, approved, and provided with the Bal Due case file) to Case Processing.

- (4) Do not file a NFTL when the accounts are awaiting abatement. When accounts are resolved take appropriate action on any existing NFTL.

5.1.14.3
(05-31-2023)

**Liability for Third Party
Paying Wages or
Supplying Funds for
Payment of Taxes**

- (1) IRC 3505(a) provides that:
 - a. Third parties who directly pay another's payrolls can be held liable for the full amount of taxes required to be withheld but not paid over to the Government.
 - b. Employers are not relieved of their responsibility to file required returns and related documents (such as Forms W-2). See IRM 5.17.14, Legal Reference Guide for a discussion of this subject.
- (2) IRC 3505(b) deals only with persons who supply funds to an employer for the purpose of paying wages when two conditions exist.
 - a. The person must know that the funds advanced are to be used specifically for the payment of wages, and
 - b. The supplier of funds must have **actual notice or knowledge** at the time such funds are advanced that the employer does not intend to, or will not be able to make timely payment or deposit of the taxes required to be withheld.
- (3) Under IRC 3505(b) the liability of the third party may not exceed 25% of the amount supplied the employer for the specific purpose of paying wages. However, a supplier of funds is liable (subject to the 25% limitation) the same as a third party who pays wages directly. The 25% limitation includes any interest accrued on the unpaid taxes, therefore the Government cannot recover 25% and then recover interest on that 25%, but it can recover interest within the 25% limitation.
- (4) IRC 3505(c) provides that any amount paid to the United States pursuant to IRC 3505(a) and (b) shall be credited against the unpaid tax liability of the employer with respect to whose employees' wages such amounts are due. However, employers are not relieved of their responsibility to file required returns and related documents (such as Forms W-2).
- (5) In order to collect from a third party under Section 3505 the United States must bring suit against the third party within ten years after the assessment of the tax against the employer.

5.1.14.3.1
(05-31-2023)

**Establishing Liability
and Applying Payments**

- (1) In certain instances, revenue officers will be notified or otherwise informed that a third party is paying or supplying wages or has paid or supplied wages for an employer. Notification will usually be made by means of Form 4219, Statement of Liability of Lender, Surety, or Other Person for Withholding Taxes. Form 4219 may be received from the taxpayer or the third party. In other cases, Form 4219 will be sent directly to the service center. In such cases, Form 4219 will be received from the service center or from CEASO.
- (2) Take the appropriate action below to secure Form 4219 or Form 941.

IF...	Then...
Another type of notice or information is received instead of Form 4219	Send three copies of Form 4219 to the third party with a pre-addressed return envelope.

IF...	Then...
Form 4219 is received from the third party with voluntary payment	a. Prepare Form 3244, Payment Posting Voucher and credit to the employer's account, and b. Retain the duplicate copy of Form 4219, until the tax liability for the period(s) involved is fully paid or otherwise disposed of.
Applicable Form(s) 941 have not been filed	a. Secure them from the employer of record, and b. Attach the original Form 4219 to the 941 return.
The employer of record will not file the applicable Form(s) 941	a. Prepare returns under authority of IRC 6020(b), and b. Consider jeopardy assessment (if the criteria for jeopardy are met) prior to forwarding the returns for assessment.

- (3) If the third party is accepting responsibility under IRC 3505(a) or IRC 3505(b), voluntary payments should equal the amount of withheld income tax and FICA required to be paid with Form 941. See IRM 5.1.14.3(3) for the extent of the liability under IRC 3505(b).

Note: The employer of record should be looked to for balances outstanding after the third party has voluntarily satisfied their responsibilities under 3505. This would only apply to section 3505(b) liability where the amount due by the taxpayer exceeds the 25% limitation.

- (4) When returns are filed without full payment, take the following actions:
- Consider a jeopardy assessment if it meets the criteria for jeopardy.
 - If not, request a prompt assessment and upon receipt of the assessment notice, demand payment from the employer of record.

- (5) When returns are filed without full payment, take the following actions:

If payment...	Then...
Is received	Close the Section 3505 file.
Is not received	First determine the collectibility of the account from the taxpayer/employer.
Of the balance cannot be collected from the taxpayer/employer	Ascertain the liability of the third party.

- (6) Where the facts indicate a third party is liable for all or a portion of the withheld employment taxes, but the third party neglects or refuses to voluntarily pay the amount of the liability under IRC 3505, the revenue officer must develop the facts to support a recommendation for civil suit and forward this recommendation to CEASO.
- (7) Facts which may support the liability of a third party under IRC 3505(a) include the following:
- A written agreement between the employer of record and a third party which states that wages are to be paid directly by the third party.

- b. Net wages paid by a third party as evidenced by canceled checks, bank records, or cash disbursements recorded in payroll records of the third party.
 - c. Payroll records of the employer involved are maintained or controlled by the third party.
 - d. Forms 941, W-2 and W-3 have been prepared, signed, or filed by the third party.
- (8) Facts which support the liability of a third party under IRC 3505(b) include the following:
- a. A written agreement between the employer of record and the third party that net wages will be supplied by the third party.
 - b. Records of the third party showing disbursements by cash or check to the employer of record in amounts approximate to the wages subsequently paid to employees.
 - c. Statements made by the employer and the third party indicate that the third party was aware of the amount of wages paid each payroll period.
 - d. Statements indicate that the parties understood that the third party would be supplying funds to the taxpayer to pay wages.
 - e. Payroll records of the employer involved are maintained or controlled by the third party.
 - f. Forms 941, W-2 and W-3 have been prepared, signed, or filed by the third party.

5.1.14.3.2
(05-31-2023)

CEASO Responsibility

- (1) CEASO advisors will review and process suits to establish the liability under IRC 3505 of third parties paying or supplying funds for wages.
- (2) Periodically CEASO will receive from Compliance Services Collection Operations, Forms 4219, Statement of Liability of Lender, Surety or Other Person for Withholding Taxes, that were mailed directly to the Service Center.

If there is...	Then...
A case assigned to a revenue officer	CEASO will forward the form to that revenue officer.
No open case	CEASO may, at their discretion, forward Form 4219 to the Territory Manager to be used as a Collection Initiative Program (CIP) lead.

5.1.14.4
(05-31-2023)

Performance Bond Provisions of the Miller Act

- (1) Before a contract exceeding \$100,000 is awarded for construction, alteration, or repair of any public building or public work of the United States, the **prime contractor** must furnish a performance bond with a surety satisfactory to the officer awarding the contract, and in an amount the officer considers adequate, for the protection of the Government. Refer to Section 3131 of Title 40 of the United States Code (Miller Act).
- (2) The provisions of the Miller Act apply only to taxes collected, deducted, or withheld from wages paid by the **prime contractor** and are not applicable to subcontractors.

5.1.14.4.1

(05-31-2023)

- (1) The revenue officer's responsibility is determining whether there are taxes owed.

**Procedures for Holding
Surety Liable for Unpaid
Withholding Taxes**

If the prime contractor...	Then ...
Failed to pay after collection action -	Ensure the surety receives notice within 90 days after the return is filed (or 180 days from the due date of return, whichever is sooner) identifying each period of liability.
Worked on a number of projects during the taxable period and there's no breakdown by contract -	<ol style="list-style-type: none"> Estimate taxes by determining the percentage of payroll for each contract in relation to the total payroll or based on available records and affidavits from officers or responsible persons having knowledge of the facts. Limit the liability of the surety to the amount collected, deducted, or withheld (or required to be) from wages paid by the contractor and interest, penalty or other additions thereto as may be applicable. Include the employee's portion of social security taxes as well as income tax.
Is still due funds under the contract -	<ol style="list-style-type: none"> Levy on the contract Give notice to the surety for the purpose of holding the surety liable under the Miller Act. Example: There is limited time in which notice can be given to the surety (within 90 days after the return is filed). Exception: Results of any levy action will usually not be known within the period for giving notice to the surety.

- (2) The following step table walks through the revenue officer actions when pursuing the surety for unpaid withholding taxes:

Revenue Officer Actions with Recommendation to Pursue Notice

Step	Action
1	<p>Prepare a recommendation to issue a notice and include the following information:</p> <ol style="list-style-type: none"> Name, address, and TIN of taxpayer who is principal on the performance bond, Tax identification data (tax period, type, assessment date, amount, etc.), Brief description of the project and location, Contract data (contract number, date, price, amount outstanding, contracting government agency, name and address of the contracting officer, etc.), Name and address of surety or sureties, penal sum of bond and date bond executed, Proposed liability of surety (show each period separately), Basis of computation, such as taxpayer's records, taxpayer's statement, etc., Date and status of levy when levy has been initiated by the revenue officer, and Summary of actions taken to collect the liability from the taxpayer.
2	Forward recommendation through the group manager to CEASO.

Step	Action
3	Continue collection action against the taxpayer.
4	Take the following actions when payment(s) are received after submission of the recommendation: <ol style="list-style-type: none"> Apply first to the portion of the tax liabilities to which the Miller Act provisions are not applicable and to non-trust fund taxes, then to trust fund taxes subject to the Miller Act., and Promptly notify CEASO since this may affect the surety's liability.

(3) The following step table walks through the advisor's actions:

CEASO Advisor Actions

Step	Action
1	Open an NFOI on ICS no later than 7 calendar days.
2	Complete review of the revenue officer's recommendations no later than 14 calendar days of receipt in the group.
3	Expedite the review if appropriate.
4	Recommendation not approved: <ol style="list-style-type: none"> Advise the revenue officer of the reason. Provide the reason in the ICS history.
5	Recommendation approved : <ol style="list-style-type: none"> Prepare the notice to the surety in quadruplicate, Mail original by certified mail or deliver if necessary, and Forward a copy to the revenue officer for notification of the action taken.

(4) Where the surety does not pay, the following step table walks through revenue officer action for additional enforcement action.

Revenue Officer Follow Up Enforcement When the Surety Compliance Period Expires

Step	Action
1	Suit for failure to comply with the terms of the performance bond: <ol style="list-style-type: none"> Consideration occurs during the one-year period from the date notice was given to the surety If submitting the suit recommendation needs to be in Counsel's office (after review and approval), at least 4 months before the end of that one year post-notice period.
2	Include the basic data with the suit recommendation, together with copies of the performance bond, the notice to the surety requesting payment, and any other related documents.
3	Notify area counsel promptly of any credit or abatement to the tax that may affect the surety's liability after the recommendation has been referred for suit.
4	Any actions against the surety take place after surety's liability determined by the court .