



MANUAL TRANSMITTAL

Department of the Treasury
Internal Revenue Service

5.1.29

JANUARY 9, 2015

EFFECTIVE DATE

(01-09-2015)

PURPOSE

- (1) This transmits new IRM 5.1.29, Field Collecting Procedures, *Petition for Remission Program*.

MATERIAL CHANGES

- (1) This section contains information and instructions for the Petition for Remission process. The purpose of this IRM is to provide instruction to advisors for accurate review and preparation of the petition for remission in order to recover fraudulent refunds that have been seized by federal law enforcement agencies. It is intended for Small Business/Self Employed (SB/SE) employees who process the Petition for Remission requests.

EFFECT ON OTHER DOCUMENTS

Incorporated Interim Guidance Memorandum titled, *Petition for Remission*, control number 05-0914-0058 dated September 12, 2014.

AUDIENCE

The target audience is SB/SE.

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Small Business/Self-Employed

5.1.29

Petition for Remission Program

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5.1.29.1
(01-09-2015)
Overview

- (1) The Petition for Remission (PFR) is a tool available to the IRS to recover fraudulent refund amounts that have been seized by a federal law enforcement agency and subsequently forfeited using Title 18 seizure/forfeiture authority. This tool ensures that the recovered funds are returned to the General Fund. The PFR process has been transferred from Criminal Investigation (CI) to Collection based on feedback by the Department of Justice (DOJ).
- (2) This section will discuss:
 - United States Code and Code of Federal Regulations
 - Reviewing a Petition for Remission
 - Requesting the Investigation Information
 - The Content of a Petition for Remission
 - Granting a Petition for Remission
 - Requests for Reconsideration

5.1.29.2
(01-09-2015)
United States Code and Code of Federal Regulations

- (1) The federal regulations governing PFRs provide that, where an agency of the United States is entitled to remission or mitigation of forfeiture because of an interest that is recognizable under this part or is eligible for such transfer pursuant to 18 USC § 981(e)(6) [providing for restoration of forfeited property to “any victim of the offense giving rise to the forfeiture”], such agency shall request the transfer in writing, in addition to complying with any applicable provisions of 28 CFR §§ 9.3 through 9.5 dealing with PFRs.
- (2) In 2004, the DOJ issued Directive 128, which allowed CI to use Title 18 forfeiture statutes in certain tax investigations to recover fraudulent refund amounts. Although IRS civil collection methods are the usual means to recover fraudulent refund amounts, these methods may prove inadequate in certain cases. Such cases where civil collection methods may not be adequate include, but are not limited to, refund fraud schemes in which:
 - The identities of fictitious or deceased individuals or
 - The identity of an individual obtained without the knowledge or consent of that individual (Identity Theft); and
 - The individual was not in any way complicit in the filing of the wholly false return for refund.
- (3) The following sections in Title 18 provide for civil and criminal forfeitures for violations investigated in these types of cases.

5.1.29.3
(01-09-2015)
Civil or Judicial Forfeitures

- (1) All civil forfeiture statutes presently in effect are in rem proceedings in which the property itself, not the owner of the property, is accused of wrongdoing. For that reason, only property that was actually used to commit, was derived from, or was involved in an offense, or property traceable to it, is subject to forfeiture. For more information on Title 18 civil forfeitures see IRM 9.7.2, *Civil Seizure and Forfeiture*, and 18 USC § 981.

5.1.29.4
(01-09-2015)
Criminal Forfeitures

- (1) Criminal forfeitures are in personam actions that are limited to the property interests of the defendant. They are imposed as part of the defendant’s sentence and are distinguished from civil forfeiture that may be pursued as a civil action against the property in rem without regard to whom the owner may be. A criminal forfeiture may only be sought as part of a criminal prosecution, and may not be ordered unless and until the defendant is convicted of the crime(s) for which forfeiture is to be imposed.

5.1.29.5
(01-09-2015)
Providing Notice of Forfeiture

- (1) In a Title 18 administrative civil forfeiture action, the seizing agency is required to send notice to interested parties as soon as practicable. Notice is required to be sent no more than 60 days after the date of the seizure unless one of the exceptions listed in 18 USC § 983 applies.
- (2) If possible, within 60 days after the date of seizure, a notice must be sent by the seizing agency or Assistant U.S. Attorney to all persons whose rights and interests in the seized property will or may be affected by forfeiture and whose identities and addresses are reasonably ascertainable. When the seizing agency determines that IRS may have an interest in the assets, notice of the seizure will be sent to:

Internal Revenue Service
 Petition for Remission
 Attn: Advisory
 801 N. Broadway, MDP-53
 Nashville, TN 37203

5.1.29.6
(01-09-2015)
Reviewing a Petition for Remission

- (1) Advisory personnel will ensure the notices include the following:
 - a. Description of the property seized;
 - b. Date, time, place, and if known, cause of the seizure;
 - c. Procedure and rights to contest the forfeiture;
 - d. Newspaper in which the notice of seizure is to be published and the dates of the publication;
 - e. Final claim date;
 - f. Forfeiture date, if known;
 - g. Procedure to request relief through the petition process; and
 - h. Right to seek release of seized property based on hardship.

5.1.29.7
(01-09-2015)
Receiving a Notice of Forfeiture

- (1) Advisory personnel are responsible for receipt and review of all notices of forfeiture and will be responsible for filing a timely PFR.
 - a. A PFR must be filed by the date specified in the notice, or if an extension is granted by the seizing agency, by the extended due date.
 - b. Advisory will establish a case on Integrated Collection System (ICS) by opening a Non-Field Other Investigation (NFOI) with an action code 139, Petitions for Remission, within three business days prior to initial review.
 - c. All case actions will be documented on ICS.
 - d. The procedure specified in IRM 5.10.7.1.1(2), *ICS Case Control Identification Numbers*, should be used to set up an artificial taxpayer identification number as needed
 - e. The advisor will review the notice to ensure that it has the information required, within seven calendar days of receipt.

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- (4) This PFR process will allow the IRS to exercise its claim against these monies if it can be proven the subject was involved in stolen identify refund fraud (SIRF).

5.1.29.8
(01-09-2015)
**Requesting the
Investigation Information**

- (1) If, after the initial review, the advisor determines that filing a petition may be appropriate based on initial research completed, the advisor contacts the Asset Forfeiture Coordinator (AFC) to request the investigation file. The advisor can contact the AFC via phone or send requests via secure email to *CI-SDC Research. The investigation file will provide the advisor with the needed information to determine if a petition should be filed.
- (2) In the case of CI forfeiture, in which CI performed the seizure, the Asset Forfeiture Coordinator (AFC) will not send a notice until a Criminal Tax (CT) Attorney has prepared and submitted a Law and Fact Memorandum to the Special Agent in Charge supporting the administrative forfeiture. The AFC will provide a copy of the notice and CT memo to the advisor to place in the administrative file. No CT memo will be provided if grand jury information is present.
- (3) In the case of forfeitures initiated by other federal agencies, such as the United States Secret Service (USSS), the AFC will be the point of contact when requesting any investigation file regardless of which federal agency conducted the forfeiture. The following actions should be taken by the advisor:
 - a. Contact CI and request the AFC provide the investigation information. The AFC will work with the seizing agency as well as provide any internal CI information that could be useful.
 - b. If the Advisor's request is by email, they will include their contact information and a copy of the notice.
 - c. Follow up with AFC no later than 10 days after contact if the investigation information is not received.

5.1.29.9
(01-09-2015)
**Petition for Remission
Forfeiture Process**

- (1) When a PFR is filed in an administrative or civil judicial forfeiture action, the forfeiture process, including the publication of the notice of seizure, will continue as scheduled. However, if no claims are filed and the property is forfeited, it will not be placed into official use, sold, or otherwise disposed of according to law until final action is taken on the petition.

5.1.29.10
(01-09-2015)
**Preparing a Petition for
Remission**

- (1) In most cases, even if the information is not complete, a PFR will be filed based on the research that was conducted that links the assets to a scheme.
- (2) The advisor will ensure that the assets are tied to a Stolen Identity Refund Fraud scheme. In an administrative forfeiture action, the agency that conducted the forfeiture will be responsible for determining if there is sufficient evidence to grant the PFR.
- (3) In some cases, the agency may request additional information to support the petition filed. In a civil judicial forfeiture action, the DOJ, Criminal Division, Asset Forfeiture and Money Laundering Section (AFMLS) will determine whether the petition should be granted.

- (4) There is no prescribed format for a PFR. The written notice sent to interested parties in a civil forfeiture action includes the instructions to request relief through the petition process. The advisor will address the following in preparing the PFR.
 - a. The petition should be addressed to the party listed on the notice.
 - b. The petition must identify the property seized, the date of the seizure, and proof of ownership interest in the property.
 - c. The petition should describe the facts and circumstances that justify the return of the property, the basis for the IRS's claim, and the nexus between the IRS and the property.
 - d. The petition should provide information linking the asset to the crime and the interest of the United States.
 - e. The petition should include copies of documentary evidence where appropriate.
 - f. The petition should be signed under oath subject to penalty of perjury. The authority to sign the petition has been given to the Territory Manager Specialty Collections, Offers, Liens and Advisory. Petitions will be forwarded to the Territory Manager for signature.
 - g. The petition should also include the statement that if granted, the party listed on the notice should contact the advisor for the Intergovernmental Payment and Collection (IPAC) instructions to transmit the funds to the IRS. The IPAC form with specific codes must be utilized so that the funds can be electronically transferred to the general fund. See IRM Exhibit 5.1.29-1.

5.1.29.11
(01-09-2015)
Criteria for Remission

- (1) If research conducted by the advisor can establish that the Government has been harmed, the petition must establish:
 - a. A valid, good faith, and legally cognizable interest in the seized property as owner or lienholder, and
 - b. The petitioner is an innocent owner within the meaning of 18 USC § 983(d). See IRM 9.7.7.2.1, *Definition of Innocent Owner*.
- (2) The petitioner has the burden of proof, by preponderance of the evidence, to show that he/she is an innocent owner.
- (3) If legal advice or assistance is needed in preparing the petition, the advisor should contact Associate Area Counsel, SB/SE.

5.1.29.12
(01-09-2015)
Granting of a Petition for Remission

- (1) Once the PFR is complete, the advisor will route the PFR through her/his manager to the TM, SBSE Collection Advisory Territory via email, US Postal Service, or hand delivery. See Delegation Order 5-6 signed 4-12-2012.
 - a. If CI conducted the forfeiture, the TMs signed petition can be electronically signed and sent by secure email back to the originator of the notice.
 - b. In the case of forfeitures initiated by other federal agencies, such as the USSS, all petitions may be digitally signed and returned to them if the outside federal agency accepts our digital signature. If not, all other petitions should be printed out, signed with an original signature and mailed back to the originator using overnight mail.
 - c. If the notice of forfeiture was received from CI, a copy of the completed and signed petitions should be electronically transmitted to the CI agent that provided the notice.
 - d. Advisory retains a signed copy to place in the case file.

- e. If the petition is granted, the forfeiting agency or AFMLS will contact the advisor for the IPAC procedures to transmit the funds. This information is obtained from the IPAC coordinator in Ogden. The IPAC form with specific codes should be utilized so that the funds can be electronically transferred to the general fund. See IRM 5.1.29-2.

5.1.29.13
(01-09-2015)
Denial of a Petition for Remission

- (1) In the case of a law enforcement agency seizure, if the agency denies the PFR or mitigation:
 - a. A decision letter will be sent by the agency and will advise the IRS of the reasons for denial.
 - b. The letter will also advise the petitioner of the right to appeal the decision of the agency, by submitting a request for reconsideration of the denial.

5.1.29.14
(01-09-2015)
Request for Reconsideration

- (1) A request for reconsideration of the denial of a PFR or mitigation will likely be considered if the request is based on information or evidence not previously considered that is material to the basis for the denial or presents a basis clearly demonstrating that the denial was erroneous.
- (2) Only one request for reconsideration of a denial of a petition will likely be considered.
- (3) The advisor must prepare the reconsideration request. The request for reconsideration must be postmarked or received by the agency denying the PFR within 10 days from receipt of the denial letter.
- (4) If no new information is available since the submission of the original PFR to the seizing agency, no reconsideration will be requested. If additional information is available to substantiate that the funds identified in the PFR were issued due to fraudulent schemes, then the advisor will prepare a request for reconsideration which is submitted with the newly acquired information.
- (5) Once the approval, denial, or reconsideration denial has been received from the seizing agency, the advisor should close the case if denied or continue to monitor for the proceeds to be submitted through IPAC.
- (6) If no response is received within 180 days from the date the PFR is submitted to the seizing agency, then a follow up letter with a copy of the PFR attached should be sent by the advisor to the seizing agency asking them to reply within 60 days.
- (7) If no response is received to the follow up letter, Advisory management has the discretion to have the advisor pursue or close the PFR.
- (8) The NFOI for the petition for remission will be closed upon receipt of the funds, when a final denial is received or when Advisory management decides further pursuit of the funds is not appropriate.

5.1.29.15
(01-09-2015)
Case Files and Retention

- (1) The case files for PFRs will be retained for two years and then sent to the Federal Records Center to be retained for ten years.

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