

Handbook 105.2

Litigation and Judgments

Chapter 1 -- General Guidelines

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[105.2] 1.1 (04-14-1997) Introduction

1. This handbook has been reformatted into the new IRM writing style and format which will be issued in 8 1/2 x 11 size. It includes a new decimal numbering system. It is expected that by October 1997 all Compliance IRM text will be in the new format. There are no substantive changes from existing instructions.

[105.2] 1.2 (04-14-1997) Overview

1. There are situations which require the aid of the court to collect the tax or provide additional protection to the Government. This handbook contains procedures for initiating civil judicial actions once all appropriate administrative actions have been taken.

[105.2] 1.3 (04-14-1997) Criteria for Bringing Suit

1. Do not recommend a suit without exhausting administrative remedies. If there are untried administrative tools which you know would be ineffective, explain this in your recommendation.
 2. Do not recommend a suit if the amount expected to be collected is less than the amount in text 700 of LEM V. If there are overriding concerns which dictate a suit for less than this amount, fully explain them in the recommendation.
-

[105.2] 1.4 (04-14-1997)
Collection Action during Litigation

1. Do not take enforced collection action on any liability of a taxpayer involved in litigation without prior discussion with district counsel.
2. Report any account balance changes on modules in litigation to district counsel.
3. When refund litigation on a divisible assessment (for example, the trust fund recovery penalty) is pending, Policy Statement P-5-16 requires withholding collection as long as the government's interest is protected and collection is not in jeopardy. In ensuring that the government's interest is protected, consider requiring surety bond or other collateral if filing a notice of lien would not provide sufficient protection.
4. Occasionally an issue is litigated through a test case while other cases are held in abeyance. Treat such related cases as if the taxpayer were involved in litigation, provided collection is not in jeopardy, the government's interest is protected, and the issue is the same as the only being litigated. Resolve amounts not in dispute before suspending collection.
5. When collection is being withheld, monitor the progress of the litigation to ensure that the case is being pursued.

[105.2] 1.5 (04-14-1997)
Litigation Transcripts

[105.2] 1.5.1 (04-14-1997)
Responsibility

1. LITIGATION transcripts are processed by district SPf.
2. RFND LIT transcripts are processed by the function with responsibility for the litigation (See text 3.2.1.)
3. TXCT CASE transcripts are processed as follows:

If	Then
the module has been in TDA status District SPf	
otherwise	Appeals

[105.2] 1.5.2 (04-14-1997)
Procedures

1. If the transcript shows that an available credit will satisfy a frozen module, request input of TC 521 to each module containing a TC 520 to release the freeze and to permit automatic application of the credit to that module.
2. If a refund to be applied will not fully satisfy the account, or if a credit is to be transferred from one Master File to another, and TC 520 should not be reversed, prepare a memorandum requesting SCCB to manually transfer the credit.
3. If the credit is to be refunded to the taxpayer without offset, prepare Form 5792, Request for IDRS Generated Refund.

NOTE:

For extensive information about the different types

of suits, see Chapter 400, Suits by the United States, and Chapter 500, Suits against the United States, in IRM 57(16)0, Legal Reference Guide for Revenue Officers

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Chapter 2
Suits by the United States

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[105.2] 2.1 (04-14-1997)
Revenue Officer Procedures

[105.2] 2.1.1 (04-14-1997)
Report Preparation

1. Review Chapter (12)00 of IRM 57(16)0, Legal Reference Guide for Revenue Officers, for information about

investigations and reports. This includes samples of revenue officers' narrative reports.

NOTE:

Prepare all documents in quadruplicate.

2. Prepare a narrative report, using Form 4478, Civil Suit Checklist, as a guide.
3. Complete the following forms for all recommendations:
 - o Form 4477, Civil Suit Recommendation
 - o Form 4478, Civil Suit Checklist
 - o Form 4481, Transmittal--Legal Action
4. Complete the following forms if the suit involves specific property:
 - o Form 4479, Lien and Claimant Data--Civil Suit
 - o Form 4480, Property Description--Civil Suit
5. If the property is an insurance policy, include the following information on Form 4480
 - o name and address of insurance company
 - o policy number
 - o date of policy
 - o amount of policy
 - o cash surrender value
 - o amount of any loan outstanding and date made
 - o whether the loan was an automatic premium loan
 - o whether the insurer is holding any accumulated dividends
 - o whether the taxpayer has the right to change the beneficiary
 - o name and address of each beneficiary
6. Include in the package copies of all pertinent documents.

[105.2] 2.1.2 (04-14-1997)

Account Disposition

1. When the recommendation is complete, forward it to Special Procedures function (SPf) for review and processing. Include in your transmittal a request for TDA closing, if applicable.
2. Retain the account in inventory. SPf will input a closing transaction after review.

[105.2] 2.2 (04-14-1997)

SPf Procedures

[105.2] 2.2.1 (04-14-1997)

Initial Processing

1. Open a case on the Automated Workload Control System (AWCS).
2. Review the recommendation. Consider whether it meets all criteria for bringing suit.

[105.2] 2.2.1.1 (04-14-1997)

Rejected Recommendations

1. Return the recommendation to the originator with an explanation.
2. Close the AWCS case.

[105.2] 2.2.1.2 (04-14-1997)

Approved Recommendations

1. Order certified transcripts and original returns and administrative files.
2. Input TC 520 with the appropriate closing code. See Exhibit 2-1.
3. Make a Settlement Option Procedure (SOP) determination.
4. When all documents have been gathered, secure approval and forward the file to district counsel.

[105.2] 2.2.1.2.1 (04-14-1997)

Settlement Option Procedure (SOP)

1. The following types of cases may be designated SOP as long as the amount in dispute is less than \$200,000:
 - o suits to reduce to judgment
 - o suits to recover erroneous refunds
 - o suits to establish fiduciary liability
 - o suits to establish liability under I.R.C. § 3505
 - o suits to establish transferee liability
 - o bankruptcy, insolvency, or probate proceedings
 - o suit for failure to honor a levy
2. You may recommend that a suit be excluded from SOP, based on one or more of the following considerations:
 - o the taxpayer is in flagrant noncompliance
 - o settlement may create difficulty in collecting from other taxpayers in the community
 - o the case is especially sensitive
 - o other factors which would make settlement inappropriate or inadvisable
3. Note Form 4477, item 3 "Settlement Option Procedure" or "No Settlement Option Procedure."

[105.2] 2.2.2 (04-14-1997)

Followup

1. At least annually determine the status of all open recommendations, matching the AWCS inventory with the listings produced by the Litigation Accounts Management System (LAMS).
2. If a recommendation is rejected by district counsel or the Department of Justice, reverse all input transactions and advise the originator.
3. See Chapter 4 for information on processing judgments.

Exhibit [105.2] 2-1 (04/14/97)
Closing Codes for Transaction Code 520

Type of Suit	CC	Suspends TDA	Suspends COLSED
Enforce Federal Tax Lien, Failure to Honor a Levy, Open Safe Deposit Box, Injunction, Wrongful Levy	70	Yes	No
	75	No	No
Refund Suit	71	No	No
	73	Yes	No
Suit to Reduce Claim to Judgment	80	Yes	Yes

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Chapter 3
Suits against the United States

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[105.2] 3.1 (04-14-1997)
General

1. Promptly respond to all requests from either the United States Attorney or district counsel. Meeting time limits is critical.
2. If you receive service of a Summons and Complaint, date stamp it and forward a copy to the U. S. Attorney.
CAUTION:

Do not return the acknowledgment.

3. If you receive a Summons and Complaint in the mail, sign but do not date the acknowledgment form. Forward a complete set of documents to district counsel.

[105.2] 3.2 (04-14-1997)

Refund Suits

[105.2] 3.2.1 (04-14-1997)

Responsibility

1. Responsibility for different types of suits is as follows:

If	Then
the suit is by a third party	District SPf
trust fund recovery penalty	
is involved	District SPf

all other refund suits	Service center refund
	litigation unit

[105.2] 3.2.2 (04-14-1997)

Initial Processing

1. Fill district counsel's requests for documents and transcripts.
2. In district SPf, open a case on AWCS. In service center, control on IDRS.
3. If a tax module is in TDA status, contact the responsibility unit to determine whether collection should be withheld.
4. Input TC 520 with the appropriate closing code. (See Exhibit 2-1.) If any module receiving TC 520 has a balance due, also request input of TC 130 to prevent erroneous refunds.

[105.2] 3.2.3 (04-14-1997)

Followup

1. Advise district counsel of any change in the balance due.
2. At least annually, verify that the case is still in litigation. You may use the quarterly listings produced by LAMS.
3. If there is a balance due and the CSED is within 1 year, determine whether the United States has counterclaimed for judgment.

If	Then
judgment has been requested	input TC 520, cc 80
otherwise	seek advice from district counsel.

[105.2] 3.2.4 (04-14-1997)

Closing Actions

1. The following actions must be taken to close refund suits:
 1. Return all administrative files.
 2. Prepare abatement and refund documents as instructed by counsel.
 3. Reverse TC 520.

4. Close the AWCS or IDRS control.

[105.2] 3.3 (04-14-1997)
Actions Involving Disclosure Issues

1. The following actions are the responsibility of the district disclosure office:
 - o suits under the Freedom of Information Act
 - o suits under the Privacy Act
 - o subpoenas for testimony or documents
2. The disclosure office is responsible for providing any necessary information to counsel and for securing testimony authorizations and providing guidance to subpoenaed employees.

[105.2] 3.4 (04-14-1997)
Section 2410 Suits

1. The following types of actions may be brought in state or Federal court under 28 U. S.C. § 2410:
 - o quiet title
 - o foreclosure
 - o partition
 - o condemnation
 - o interpleader
2. District office Special Procedures is responsible for all 2410 actions.

[105.2] 3.4.1 (04-14-1997)
Interpleader Suits

1. Open a case on AWCS.
2. Immediately forward one copy of the summons and complaint to the U. S. Attorney and two copies to district counsel.
3. Prepare a report, securing information from the TDA responsibility unit if necessary, and forward it to district counsel. District counsel will advise of the recommended course of action.

[105.2] 3.4.2 (04-14-1997)
Foreclosures

1. Upon receipt of the summons and complaint from the U. S. Attorney, research ALS. If there is no notice of lien on file, so advise the U. S. Attorney.
2. In all other cases,
 - A. Open a case on AWCS.
 - B. Provide the requested information to the U. S. Attorney.
3. In all other cases,
 - A. Open a case on AWCS.
 - B. Provide the requested information to the U. S. Attorney.
4. After providing the information to the U. S. Attorney,
NOTE:
See IRM 5738 for redemption criteria and instructions

If Then
 monitor for a sale date, ensuring
the case meets redemption that at least 90 days will be

criteria available for a redemption investigation.
the case does not meet redemption criteria close the case on AWCS.

[105.2] 3.4.3 (04-14-1997)
All Other Actions

1. Open a case on AWCS.
2. Deal directly with the U. S. Attorney, providing any requested documents and information.

[105.2] 3.5 (04-14-1997)
Miscellaneous Suits

1. District SPf is responsible for answering district counsel and U. S. Attorney requests for assistance on the following types of cases:
 - o Injunctions to restrain collection
 - o wrongful levy suits (I.R.C. § 7426)
 - o suits to recover surplus proceeds (I.R.C. § 7426)
 - o damages from failure to release a lien (I.R.C. § 7432)
 - o damages from unauthorized collection action (I.R.C. § 7433)
2. Open a case on AWCS.
3. At the conclusion of the case,
 - A. request any abatement or refund action as directed by counsel;
 - B. close the case on AWCS.

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Chapter 4
Suits against IRS Employees

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+ [105.2] 4.1 Background

+ [105.2] 4.2 Procedures

[105.2] 4.1 (04-14-1997)
Background

1. Generally suits resulting from employees' official actions should be brought against the United States, not against individual employees. However, this is no guarantee that employees will not be sued.
2. General Legal Services (GLS) provides advice and assistance to employees sued in their official capacity.

[105.2] 4.2 (04-14-1997)
Procedures

1. Immediately notify your manager and GLS if you are sued. Forward a copy of the summons and complaint to the district SPf, which will coordinate the activities of counsel and other necessary functions. If the suit cites I.R.C. §§ 7217 or 7431, also notify the district disclosure officer.

CAUTION:

- Communications with your manager and GLS are not protected under attorney/client privilege.
2. GLS will assist you in preparing an affidavit and securing representation from the Department of Justice, if you desire.

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Chapter 5
Judgment Followup

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 [105.2] 5.1 (04-14-1997)
 General

1. District SPf is responsible for initial processing of judgments and establishing followup.
2. SCCB is responsible for monitoring taxpayers' compliance with judgments resulting from settlements requiring future actions.
3. Revenue officers may be called upon to assist in collecting judgments and conducting followup investigations.

 [105.2] 5.2 (04-14-1997)
 Assessed Liabilities

1. Upon advice of judgment entered, input TC 550, definer code 4, using the judgment expiration date as the CSED.
2. Input TC 522 if there is an unreversed TC 520.
3. If the judgment includes a payment agreement, establish an IDRS or manually-monitored installment agreement. Otherwise, evaluate for current collection potential.

If	Then
there is current collection potential	Input TC 532 if there is an unreversed TC 530. Forward any useful information to the revenue officer who will receive the TDA. 3. Close the AWCS case.
there is no current collection potential	Input TC 530 with the appropriate closing code. 2. Close the AWCS case.

[105.2] 5.3 (04-14-1997)
Unassessable Liabilities

[105.2] 5.3.1 (04-14-1997)
Responsibilities

1. Judgments for which there is no assessed liability against the judgment debtor must be collected by the U. S. Attorney. IRS provides the information which will allow the U. S. Attorney to execute on the judgment.
2. SPf must follow up annually on all active judgments.

[105.2] 5.3.2 (04-14-1997)
SPf Procedures

1. During November or December of each year, review the CC RTVUE information for the income tax return filed for the previous year by each taxpayer on whom there is a judgment in active status.
2. During January of each year, initiate a Form 2209, Courtesy Investigation, for each judgment case in active status. Attach a copy of the last investigation report and the RTVUE information. If a return was not located for the previous year, include that information on Form 2209.
3. If the revenue officer locates property which should be seized, prepare a memorandum to the U.S. Attorney. Provide sufficient details to permit the U.S. Marshall to enforce collection. Ordinarily, do not inform the U.S. Attorney of real property against which the judgment may be executed unless the amount realizable from the sale will equal or exceed the dollar criterion for recommending suit.
4. In the year preceding the expiration date of the judgment lien, determine the taxpayer's potential earning capacity and request refiling of the judgment if appropriate. Direct this request to the U. S. Attorney. Send a copy to the Judgment and Collection Unit in the Tax Division of the Department of Justice. The U. S. Attorney will confirm the refiling and advise the Service of the new expiration date.
5. Cases may be removed from active followup status when it is determined that there is little or no potential for the judgment to be satisfied.

[105.2] 5.3.3 (04-14-1997)
Revenue Officer Procedures

1. Conduct an investigation as directed on Form 2209. If you identify sources of collection, secure complete information regarding value and encumbrances.
2. Prepare a report to SPf, including the following items:
 - A. recommendation on current execution by the U. S. Attorney;
 - B. details on assets subject to execution;
 - C. recommendation on followup next year.

[105.2] 5.4 (04-14-1997)
Offers in Settlement

[105.2] 5.4.1 (04-14-1997)
Responsibilities

1. District SPf is responsible for coordination between the Department of Justice (DOJ) and SCCB. It is the primary point of contact on settlements.
2. SCCB is responsible for monitoring taxpayers' compliance with settlement terms.
3. If the taxpayer requests modification of a settlement or collateral agreement, advise DOJ, which alone has authority to modify settlements.

[105.2] 5.4.2 (04-14-1997)

SPf Procedures

1. Upon notification of an accepted offer, photocopy the following documents and forward them to the SCCB offer in compromise tax examiner
 - o taxpayer's offer
 - o government's acceptance
 - o collateral agreement
 - o any other information needed to identify the liability and terms of the settlement
2. Assist SCCB and DOJ as requested.

[105.2] 5.4.3 (04-14-1997)

SCCB Procedures

[105.2] 5.4.3.1 (04-14-1997)

Initial Processing

1. Upon receipt, review the documents to ensure that there is sufficient information to allow proper monitoring and control. If additional information is needed, contact SPf.
2. Prepare Form 2515, Record of Officer in Compromise. Annotate Form 2515 "DOJ-Offer in Settlement" and process per IRM 5461.4. Do not input TC 480 or 780.
3. Prepare Form 6314, Deferred Payment Offer Payment Record, for all settlement agreements requiring deferred payments. Maintain Form 6314 in chronological order by anniversary date of payments due. If the account is NMF, follow the procedures outlined in IRM 5468.1.
4. Prepare Form 6313, Collateral Agreement Payment Record, for all settlement agreements involving a collateral agreement. File Form 6313 in alphabetical order.

[105.2] 5.4.3.2 (04-14-1997)

Monitoring

1. Deposit all payments as revenue received and apply directly to the tax module. Process payments in accordance with IRM 5468.2.
2. Process payments received on collateral agreements in accordance with IRM 5468.2.
3. Send DOJ (through SPf) a copy of Form 6314 in October of each year and a copy of Form 6313 in May of each year.

[105.2] 5.4.3.3 (04-14-1997)

Defaults

1. When a deferred payment has not been received within 30 days after the due date, send Letter 274(C). to the taxpayer. If payment is not received within 15 days, send

Letter 275(C). If payment is not received within 30 days, send Form 2209, Courtesy Investigation, with a copy of the letters and Form 6314 to SPf requesting that DOJ be advised of the taxpayer's default.

2. When a taxpayer fails to comply with the terms of the collateral agreement within 30 days after the due date, send Letter 279(C). If no reply is received within 30 days, send Form 2209, Courtesy Investigation, with a copy of the letter and Form 6313 to SPf requesting DOJ be advised of the default.

[105.2] 5.4.3.4 (04-14-1997)

Closing Actions

1. When the terms of the agreement are fulfilled, input the appropriate adjustments to zero the account. When the transcript indicates a zero balance during the final year of the collateral agreement or when the terms of the collateral agreement have been fulfilled, close the collateral agreement account. When all amounts due under the settlement agreement, including accrued interest and amounts due under a collateral agreement, have been received, notify DOJ (through SPf) and send copies of Form 6314 and 6313.

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