

Lesson 4

Abusive Tax Avoidance Schemes and Promotions

Objectives

Advanced
Technical Training
for Revenue Officers
Level 2

SB/SE

- Describe the types of ATAT cases.
- Describe how ATAT cases are identified, developed and assigned.

Lesson 4

ATAT Coordinators

Advanced
Technical Training
for Revenue Officers
Level 2

SB/SE

- **Central point of contact**
- **Coordinate support of audits**
- **Assign/route cases**

Lesson 4

ATAT Coordinators

Advanced
Technical Training
for Revenue Officers
Level 2

SB/SE

- **Resource for ATAT revenue officers**
- **Liaison between Collection and Examination**
- **Elevate ATAT issues**

Lesson 4

Issue Management Terms

Advanced
Technical Training
for Revenue Officers
Level 2

SB/SE

- **Focal point for issue**
- **Guidance to treat issue consistently**

**Any type of plan sold to
U.S. taxpayers to obtain tax
benefits not allowable by law**

Promoter

Advanced
Technical Training
for Revenue Officers
Level 2

SB/SE

**Individual who sells
arrangements where full
asset benefit retained while
reducing or eliminating tax**

Lesson 4

Participant or Investor

Advanced
Technical Training
for Revenue Officers
Level 2

SB/SE

**Individual who pays promoter
for illegal tax reduction
benefit or scheme**

Lesson 4

Whipsaw Situation

- **Two or more parties may be liable**
- **All possibly liable parties are assessed**
- **Assessed amounts may differ**

Whipsaw Assessment

Advanced
Technical Training
for Revenue Officers
Level 2

SB/SE

- Tax may be assessed multiple times
- Collect tax only once

Lesson 4

Cross Reference Code

Advanced
Technical Training
for Revenue Officers
Level 2

SB/SE

Input of TC 971 with

- AC 266 on key case
- AC 267 on related cases

Lesson 4

ATAT Cases

Advanced
Technical Training
for Revenue Officers
Level 2

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Involve

- Promoter or preparer and participant
- Positions contrary to Federal tax laws

Lesson 4

Preparer Investigations

Advanced
Technical Training
for Revenue Officers
Level 2

SB/SE

Suspicious raised by

- results of audits
- preparer's actions and statements
- promoter investigations

Lesson 4

Participant Scheme Use

Advanced
Technical Training
for Revenue Officers
Level 2

SB/SE

- **Stop filing and paying**
- **Minimize tax**
- **Hide income and assets**
- **Avoid payment or collection**

Lesson 4

Lead Development Center

Advanced
Technical Training
for Revenue Officers
Level 2

SB/SE

Centralizes:

- Receipt and development of referrals
- Authorization and referral to Examination
- Internet research
- Case building for investigation

Lesson 4

Website Information

Advanced
Technical Training
for Revenue Officers
Level 2

SB/SE

- **Frequently asked questions**
- **LDC referral form**
- **List of promoters and schemes**
- **LDC employee information**

Lesson 4

Accessing Offshore Funds

Advanced
Technical Training
for Revenue Officers
Level 2

SB/SE

- **Two common ways:**
 - **Fraudulent loans**
 - **Credit and debit cards**

Accessing Offshore Funds Levy on Domestic Branch

Advanced
Technical Training
for Revenue Officers
Level 2

SB/SE

- **Foreign bank with U.S. branches**
- **Foreign bank operating in the U.S. through a subsidiary corporation**

Lesson 4

Repatriation Authority

Advanced
Technical Training
for Revenue Officers
Level 2

SB/SE

- **IRC section 7402(a) – implicit authority**
- **Case law – specific authority**

Lesson 4

Repatriation Elements

Advanced
Technical Training
for Revenue Officers
Level 2

SB/SE

- **Enforceable Federal tax liability**
- **Returnable property in another country**
- **Insufficient domestic property**
- **Jurisdiction over taxpayer**

Lesson 4

Before Seeking Repatriation

Advanced
Technical Training
for Revenue Officers
Level 2

SB/SE

- **Exhaust domestic collection**
- **Document foreign property**
- **Levy domestic bank branches**
- **Check for collection treaty**

Lesson 4

Concurrent Actions

Advanced
Technical Training
for Revenue Officers
Level 2

SB/SE

- **Reduce tax claim to judgment**
- **Foreclose the Federal tax lien**
- **Repatriate property**
- **Appoint a receiver**

Lesson 4

Results and Action

Advanced
Technical Training
for Revenue Officers
Level 2

SB/SE

If taxpayer	Then
Returns property	Property deposited with court
Does not comply	Pursue contempt
In contempt	Potential jail

Lesson 4

Writ Ne Exeat Republica

Advanced
Technical Training
for Revenue Officers
Level 2

SB/SE

- **Authorized by IRC section 7402(a)**
- **Action against person not property**
- **Sought to prevent persons from leaving the U.S.**

Lesson 4

Penalties IRC Section 6700

Advanced
Technical Training
for Revenue Officers
Level 2

SB/SE

Lesser of

- **\$1,000 for each activity**
- **100% of income from activity**

Penalties

IRC Section 6701

Advanced
Technical Training
for Revenue Officers
Level 2

SB/SE

- Prepares or presents in a tax matter
- Knows or believes document will be used with IRS
- Knows information results in understatement of tax

Lesson 4

Penalties

IRC Section 6694

Advanced
Technical Training
for Revenue Officers
Level 2

SB/SE

- For understatement due to unreasonable position
- Willful or reckless conduct

Penalties

IRC Section 6695

Advanced
Technical Training
for Revenue Officers
Level 2

SB/SE

Failure to:

- **Furnish return or claim for refund**
- **Sign return or claim**
- **Furnish identifying number**

Lesson 4

Penalties

IRC Section 6695 (continued)

Advanced
Technical Training
for Revenue Officers
Level 2

SB/SE

Failure to:

- Retain copy or list
- File correct information returns

Penalties

Assessment of Penalty

Advanced
Technical Training
for Revenue Officers
Level 2

SB/SE

- **RO determines if:**
 - **NFTL needed**
 - **Nominee investigation needed**

RO monitors compliance with injunction order

Lesson 4

Examination Administrative File

Advanced
Technical Training
for Revenue Officers
Level 2

SB/SE

- **Tax returns**
- **Whipsaw notices, related returns**
- **RA's work papers**
- **Summonsed records**
- **Form 906**

Lesson 4

**A connection or link
between at least two
actions or issues**

Frivolous Schemes

Advanced
Technical Training
for Revenue Officers
Level 2

SB/SE

- **Basis shifting**
- **Abusive trusts (Aegis)**
- **Conveyed assets**
- **Charitable trusts**

Lesson 4

Frivolous Schemes

Advanced
Technical Training
for Revenue Officers
Level 2

SB/SE

- Identify theft
- Home-based business
- Offshore employee leasing
- Slavery reparation

Lesson 4

Frivolous Schemes

Advanced
Technical Training
for Revenue Officers
Level 2

SB/SE

- **IRC section 861**
- **Intermediary transaction**
- **False Form 1099 refunds**

Lesson 4

Abusive Trusts

Advanced
Technical Training
for Revenue Officers
Level 2

SB/SE

Two primary variations

- Multiple trusts
- Questionable trusts

Lesson 4

Offshore Employee Leasing

Advanced
Technical Training
for Revenue Officers
Level 2

SB/SE

- **TP terminates employment with service recipient corp**
- **TP enters into employment with foreign leasing corp**
- **Foreign corp leases TP's services to domestic leasing corp**

Lesson 4

Offshore Employee Leasing

Advanced
Technical Training
for Revenue Officers
Level 2

SB/SE

- **Domestic leasing corp leases TP's services to service recipient corp**
- **TP works for service recipient corp**
- **Service recipient corp pays domestic leasing corp for TP's services**

Lesson 4

Offshore Employee Leasing

Advanced
Technical Training
for Revenue Officers
Level 2

SB/SE

- **Domestic leasing corp pays TP less than paid by service recipient corp**
- **Domestic leasing corp deducts fee for services**

Lesson 4

Offshore Employee Leasing

Advanced
Technical Training
for Revenue Officers
Level 2

SB/SE

- **Domestic leasing corp
pays foreign leasing corp
remainder paid by service
recipient corp**

Lesson 4

Compliance Initiatives

Advanced
Technical Training
for Revenue Officers
Level 2

SB/SE

- **Voluntary compliance**
- **Exam audits TP**
- **Cooperative effort between
Exam and Collection**

Lesson 4

**Advanced
Technical Training for
Revenue Officers**

Level 2

Lesson 4

**Abusive Tax Avoidance
Schemes and Promotions**

55888

Lesson 4 – 55888

Abusive Tax Avoidance Schemes and Promotions

Overview

Introduction This lesson provides an overview of the abusive tax avoidance transaction (ATAT) program. It introduces you to aspects of ATAT cases. However, it does not provide detailed instruction for working ATAT cases.

Lesson Materials

- Course book

References

- IRC sections 6700, 6701, 7402, 7407 and 7408
- [IRM 4.32](#), *Abusive Transactions*
- [IRM 5.20](#), *Abusive Tax Avoidance Transactions*
- [IRM 20.1.6](#), *Preparer/Promoter Penalties*

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Lesson 4 – 55888

Abusive Tax Avoidance Schemes and Promotions

Instructor Information

Introduction



Show slide #4-1 and introduce the lesson title and topic

This lesson provides an overview of the abusive tax avoidance transaction (ATAT) program. It introduces the participants to aspects of ATAT cases. It is not designed to provide detailed instruction for working ATAT cases.

Lesson Data

The following table provides helpful information:

Estimated Time	<ul style="list-style-type: none">• Five hours
Participant Materials	<ul style="list-style-type: none">• Course book
Instructor Material	<ul style="list-style-type: none">• Instructor Guide
References	<ul style="list-style-type: none">• IRC sections 6700, 6701, 7402, 7407 and 7408• IRM 4.32, <i>Abusive Transactions</i>• IRM 5.20, <i>Abusive Tax Avoidance Transactions</i>• IRM 20.1.6, <i>Preparer/Promoter Penalties</i>

Continued on next page

Overview, Continued

Objectives At the end of this lesson, you will be able to:

- Describe the types of ATAT cases.
 - Describe how ATAT cases are identified, developed and assigned.
-

In This Lesson This lesson contains the following topics:

Topic	See Page
Overview	4-1
Background of ATAT	4-3
Definitions	4-5
Whipsaw Assessments	4-6
ATAT Cases	4-9
Matching Activity	4-12
Accessing Offshore Funds	4-13
Levy Action Relating to Offshore Accounts	4-15
Repatriation of Assets	4-18
<i>Writ Ne Exeat Republica</i>	4-21
Penalties	4-22
Pre-Assessment Investigation	4-25
Revenue Officer Responsibility	4-28
Frivolous Schemes	4-33
ATAT Group Activity	4-41
Exhibit 1 – Summons	4-45

Instructor Information, Continued

Objectives



Show slide #4-2 and present the lesson objectives.

At the end of this lesson, the participant will be able to:

- Describe the types of ATAT cases.
 - Describe how ATAT cases are identified, developed and assigned.
-

In This Lesson This lesson contains the following topics:

Topic	See Page
Instructor Information	4-1
Background of ATAT	4-3
Definitions	4-5
Whipsaw Assessments	4-6
ATAT Cases	4-9
Matching Activity	4-12
Accessing Offshore Funds	4-13
Levy Action Relating to Offshore Accounts	4-15
Repatriation of Assets	4-18
Writ <i>Ne Exeat Republica</i>	4-21
Penalties	4-22
Pre-Assessment Investigation	4-25
Revenue Officer Responsibility	4-28
Frivolous Schemes	4-33
ATAT Group Activity	4-41

Background of ATAT

Collection Priority

The Collection Program Letter has identified abusive tax avoidance transactions as a top priority for several years. Collection's role in ATAT is important in ensuring future compliance to tax laws. Revenue officers and revenue agents work closely to ensure abusive schemes are addressed properly and expeditiously.

ATAT Coordinators

Each Field Collection area has one or more Collection ATAT coordinators who provide oversight and act as a central coordination point. The Collection coordinator is responsible for ensuring ATAT cases are controlled and transitioned properly from Examination to Collection. Their responsibilities include

- providing a central point of contact,
- coordinating Collection support of Examination audits involving ATAT cases,
- ensuring appropriate assignment and routing of cases from Examination,
- acting as a resource for ATAT revenue officers,
- acting as a liaison between Collection and Examination, and
- elevating ATAT issues to the appropriate person.

A list of Collection ATAT group manager contacts is available on Mysbse.

Department of Justice Involvement

The Department of Justice (DOJ) plays a crucial role in combating abusive promotions and schemes. They have successfully obtained injunctions against abusive scheme promoters. A list of enjoined promoters is available on the U.S. Department of Justice home page. You access this information at <http://justice.gov/tax/injunctions.htm>

Continued on next page

Background of ATAT

Collection Priority

Explain ATAT is a priority throughout the IRS operating divisions.

ATAT Coordinators



Show slides #4-3 and #4-4. Discuss the purpose of ATAT coordinators. Advise the participants ATAT promoter cases may be handled jointly between Examination and Collection.



Share your desktop and lead the participants in accessing the list of ATAT Collection Coordinators on Mysbse website. Note, this data may be archived. Use google search to locate if necessary. Advise the participants to keep this link open.

Department of Justice Involvement

Explain the Department of Justice (DOJ) has successfully enjoined promoters and participants in ATAT schemes from using and selling these schemes. Point out DOJ acts quickly on IRS referrals, filing for and receiving court-ordered injunctions.



Share your desktop and lead the participants in accessing the DOJ website.

Review the list of promoters DOJ has successfully enjoined. Access the most recent DOJ press release.

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Background of ATAT, Continued

Issue Management Teams

Issue management teams are specialized cross functional teams charged with developing a strategic approach to address a specific ATAT or ATAT-related issues. They provide

- a focal point for a specific issue, and
- the guidance needed to treat the issue consistently throughout the nation.

Information regarding specific enjoined promoters or issue management teams may be found at <http://justice.gov/tax/injunctions.htm>

You can determine the specific scheme by matching the project code shown on TXMOD with the project codes listed on :

http://serp.enterprise.irs.gov/databases/irm-sup.dr/project_code_search_exam.dr/project_code_search_exam.htm

Inventory Size

Despite increased efforts by the Internal Revenue Service and the Department of Justice, abusive tax promotions and the number of people who participate in abusive tax schemes continues to increase.

Background of ATAT, Continued

Issue Management Teams



Show slide #4-5 and discuss the role of issue management teams.



Direct the participants to click “Issue Management Teams” (IMT) on the Mysbse site. Click “Collecting taxes”, “Tools and Processes”, “Collection ATAT”, “Issue Management Teams”. This shows the list of objectives, expectations and contacts.

Inventory Size

Point out the number of ATAT cases continues to rise as more promoters and participants are identified.

Definitions

Abusive Tax Avoidance Transaction

An abusive tax avoidance transaction (ATAT) is any type of plan or arrangement sold and/or distributed by an individual, promoter or preparer to a U.S. taxpayer, that is created to obtain tax benefits not allowable by law.

Promoter

A promoter is an individual who distributes material, hosts seminars, or sells arrangements where the participant can supposedly retain full benefit from personal or business assets while reducing or eliminating taxes.

Participant or Investor

A participant or investor is an individual who pays a promoter for an illegal tax reduction benefit or scheme and uses the scheme to reduce or eliminate taxes. The participant may or may not know it is illegal, but usually does.

Whipsaw Assessment

Whipsaw assessments are assessments of tax from the same income that are assessed against multiple related entities. Since the income was filtered back and forth through multiple entities, it is called whipsaw. While the tax may be assessed two or more times, the Service only collects it once.

Definitions

**Abusive Tax
Avoidance
Transaction**



Show slide #4-6 and define abusive tax avoidance transaction (ATAT). Emphasize IRS wants to identify both promoters and participants.

Promoter



Show slide #4-7 and define a promoter.

**Participant or
Investor**



Show slide #4-8 and define a participant or investor.

**Whipsaw
Assessment**

Briefly define whipsaw assessment.

Whipsaw Assessments

Whipsaw Situation

A whipsaw situation exists when two or more individuals or entities may be liable for the tax on a given transaction. Usually the IRS cannot determine with certainty which individual or entity owes the tax. Making an incorrect decision subjects the IRS to the possibility of assessing against one party who may ultimately be determined not to be liable, but only after the statute of limitations for assessment against the other potentially liable party(s) has expired. To prevent the possible loss by choosing the wrong party, the IRS assesses or seeks to assess against all liable individuals or entities with the goal of collecting only once. The amount of tax assessed against each individual or entity may differ because their deductions may differ.

Additional information about whipsaw assessments is available in IRM 5.20.6.

Whipsaw Example

An audit investigation establishes the following for various trusts created by the taxpayer:

- Residence Trust - \$50,000 income/receivables
- Business Trust - \$150,000 income/receivables
- Rental Trust - \$75,000 income/receivables
- Taxpayer - \$25,000 income/receivables

In this example, income of \$300,000 will be assigned to all four entities resulting in identical assessments for each.

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Whipsaw Assessments

Whipsaw Situation



Show slide #4-9 and describe a whipsaw situation.
Emphasize:

- A whipsaw assessment is assessed against all related entities. This can be another individual or an entity such as a trust, a corporation or an LLC.
- The amount of each assessment may differ because the deductions available to each individual or entity may differ.

Whipsaw Example

Review the example. Emphasize each entity is assessed the total amount of assessments.

Continued on next page

Whipsaw Assessments, Continued

Description

Examination generally has no difficulty in determining the income sheltered by the scheme is taxable to the individuals. In the past, they issued statutory notices of deficiency taxing the income to the individuals. Those notices were invariably upheld by the courts. Unfortunately, that practice did not aid in collecting the tax because the resulting assessment was against the individual, who supposedly has no income and no assets. No assessments were made against the taxpayer's related entities. For example, their business trust is generating the income or the family trust holding legal title to the property. This resulted in Collection needing to

- file nominee liens and serve nominee levies,
- initiate suits to set aside fraudulent transfers,
- foreclose on the Federal tax (nominee) lien, or
- use other collection tools such as administrative transferee assessments.

Examination's issuance of whipsaw statutory notices of deficiency simplifies collection of the liabilities.

Whipsaw Statutory Notices of Deficiency

For abusive trust cases, Examination may issue whipsaw statutory notices of deficiency. This means the subjects refuse to cooperate and the Service is unable to accurately determine the correct tax owed by each entity. The Service issues notices of deficiency taxing the same income to each entity. One notice of deficiency is issued to the individual and one to each related entity. The primary individual case is referred to as the key case. The related cases are referred to as the whipsaw cases.

In response to whipsaw notices of deficiency, taxpayers often default or petition Tax Court. If they default, the Service makes assessments against each related entity. This allows collection directly from any of the related entities without filing nominee liens.

If the taxpayer petitions Tax Court, the Service seeks to obtain a Federal court decision stating the arrangement is a sham. In either case, the whipsaw process makes collection of the assessments much easier than if only one entity was assessed.

Continued on next page

Whipsaw Assessments, Continued

Description

Discuss how the whipsaw assessment process evolved.

Emphasize:

- Before the use of whipsaw assessments, Examination assessed the tax only against the individual. Whipsaws simplify collection of liabilities.
 - With all assets held by the related party such as a spouse or trust, the revenue officer was forced to:
 - file nominee Notices of Federal Tax Lien and serve nominee levies.
 - initiate suits to set aside fraudulent transfers.
 - foreclose liens recorded on property held in the name of the nominee.
 - pursue transferee assessments through administrative or civil suit.
-

**Whipsaw
Statutory
Notices of
Deficiency**

Explain Examination may be unable to determine which entity in a related case owes what amount of tax. In a whipsaw assessment, notices of deficiency are issued to each entity.

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Whipsaw Assessments, Continued

Use of Whipsaw Assessments

Although multiple related whipsaw assessments are made, you collect it only once. Thus, it is similar to the trust fund recovery penalty or related transferee assessments. Coordinating related cases is essential to monitor payments and prevent over-collection of the liability.

Cross Reference Codes

Examination requests the input of transaction code (TC) 971 to cross-reference key and related whipsaw cases.

- TC 971 action code (AC) 266 is input on the key case.
- TC 971 AC 267 is input on any related entity.

The key case will have a TC 971 AC 266 on each module referencing each related entity involved in the whipsaw assessment. The cross reference codes are input by Centralized Case Processing (CCP) when the assessments are processed.

Whipsaw Assessments, Continued

Use of Whipsaw Assessments



Show slide #4-10 and emphasize a whipsaw assessment is only collected once.

Point out this is similar to a trust fund recovery penalty.

Cross Reference Codes



Show slide #4-11 and discuss cross-reference codes on whipsaw assessments. Point out the codes are input by Centralized Case Processing (CCP) when assessments are processed.

ATAT Cases

Description An ATAT case may involve a promoter or preparer and a participant of an abusive tax avoidance transaction. Collection ATAT cases involve many of the same issues found in general program collection cases. However, they typically involve individuals who support or promote positions contrary to Federal tax laws.

For revenue officers, ATAT cases include Bal Due, Del Ret, courtesy investigation (OI) or Compliance Initiative Project (CIP) assignments. Grade levels are assigned based on complexity and established criteria.

Promoters When an abusive scheme promoter comes to the attention of the IRS, a referral is made to the Lead Development Center (LDC). Referrals often result from the examination of participant returns. Referrals can come through other sources, including revenue officers who learn about a promoter's activities through their investigations.

The LDC determines whether or not there is sufficient information to approve a promoter investigation. The LDC makes its determination in conjunction with Criminal Investigation (CI) and Counsel. If CI has an ongoing criminal investigation or believes one is justified, the civil and criminal cases are coordinated. When the LDC determines a civil promoter investigation is warranted, the accumulated file is sent to a revenue agent and a local counsel attorney is assigned.

Preparer Investigations Generally, return preparers are not independently investigated unless IRS suspicions are raised

- by the audit results of several of the preparer's clients,
- by the preparer's actions and statements while representing clients during audits, or
- through abusive scheme promoter investigations.

If the IRS initiates an investigation of the preparer's activities, it includes

- audits of returns prepared, and
 - reviews of the preparer's business practices.
-

Continued on next page

ATAT Cases

Description



Show slide #4-12 and discuss the general description of an ATAT case.

Promoters

Discuss the process used to handle promoter referrals.

**Preparer
Investigations**



Show slide #4-13 and explain why a preparer is investigated. Explain the usual role of the revenue officer is one of information and fact gathering.

Continued on next page

ATAT Cases, Continued

Preparer Investigations
(continued)

Revenue officers do not conduct preparer investigations, but may be asked to assist a revenue agent, Area Counsel or Department of Justice by securing information or making contacts. You may make a referral to the LDC if you secure information regarding a preparer using an abusive scheme.

Participant Reasons

Most participants in abusive schemes use one or more schemes to

- stop filing tax returns,
 - stop paying tax,
 - minimize the amount of tax they are required to pay,
 - hide income and assets from tax authorities, or
 - avoid payment or enforced collection by tax authorities.
-

Lead Development Center

The Lead Development Center (LDC) centralizes

- receipt and development of referrals on abusive tax schemes and promoters.
 - authorization and referral of IRC sections 6700 and 6701 investigations to Examination, Planning and Special Programs (PSP) for assignment to the field. The LDC works referrals received from within the IRS and external sources.
 - internet research to identify leads and detect sites, promoters, and promotional materials that market abusive tax schemes over the web.
 - case building to support the nationwide investigations.
-

Website Information

LDC information is available by clicking “Lead Development Center” at <http://mysbse.web.irs.gov/AboutSBSE/Exam/at/ldc/default.aspx>. The information includes:

- frequently asked questions on parallel investigations.
 - the LDC referral form.
 - a list of promoters and the scheme they promote.
 - contact telephone numbers for LDC employees. The information includes:
-

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ATAT Cases, Continued

**Participant
Reasons**



Show slide #4-14 and review the reasons participants use abusive schemes.

**Lead
Development
Center**



Show slide #4-15 and explain the role of the Lead Development Center (LDC).

**Website
Information**



Show slide #4-16 and discuss the information from the LDC available on the Mysbse website.

Continued on next page

ATAT Cases, Continued

LDC Referrals Referrals on abusive tax schemes and promoters should be submitted to the LDC through their email address: *LDC@irs.gov. Referrals should include as much information as known on the

- abusive nature and scope of the scheme,
 - involvement of the promoter and any associates in the promotion,
 - relationships with other promoters and promotions, and
 - availability of promotional and sales material.
-

LDC Referral Example During the investigation to locate the assets of Joseph Paine, you discover a website owned by Mr. Paine. The website advertises seminars and information packets for \$1,000. According to the advertisement, the information provides instruction on how to

- respond to the Internal Revenue Service and other creditors.
- “opt out of the system.”

There are testimonials from satisfied customers.

You discuss the case with your manager as a possible referral to the Lead Development Center. If referred, the LDC will check to see if Mr. Paine is attempting to market this scheme to others. When leads are sufficient to warrant an investigation, the LDC makes a referral to Examination.

The Role of Collection The LDC and Examination solicit Collection involvement from the ATAT Coordinator as early as possible in the investigation. An early exchange of information will result in a developed collection strategy and will expedite the collection process.

ATAT Cases, Continued

LDC Referrals Discuss the information to provide when a referral is submitted to the LDC. Point out the email address can be accessed from the Mysbse website.



Share your desktop. Access the Mysbse website and LDC link and demonstrate how to access the LDC referral Form 14242.

- Mysbse.web.irs.gov
 - Examination
 - Abusive Transactions > Technical Issues > Lead Development Center
-

LDC Referral Example Review the example. Point out the LDC keeps track of promotions and promoters.

The Role of Collection Explain the role of the revenue officer in an investigation, such as locating a promoter and/ or assets. If an existing liability is assigned to the revenue officer, a summons to aid collection can also be issued. If Examination is issuing a quick assessment, Collection may be asked to issue a jeopardy levy.

Matching Activity

Match column A to the corresponding definition in column B

Column A

- A) ATAT Coordinator
- B) Department of Justice

- C) Issue Management Teams
- D) ATAT
- E) Whipsaw Assessment
- F) Promoter

- G) Participant or Investor

Column B

- 1) Assessed against multiple related entities
 - 2) Arrangement sold and/or distributed by an individual, promoter or preparer to a U.S. taxpayer, that is created to obtain tax benefits not allowable by law
 - 3) Individual who distributes or sells the tax benefit
 - 4) An individual who pays for an illegal tax benefit
 - 5) Enjoins promoters and participants
 - 6) ATAT group manager who provides oversight and acts as a central coordination point
 - 7) Cross functional team which provides guidance needed to treat the issue consistently throughout the nation
-

Matching Activity

Conduct the Matching Exercise (allow 5 minutes). Use polling questions or add to a whiteboard and draw the lines to the answers as the participants provide them

Answer Key:

Column A

- A) ATAT Coordinator
- B) Department of Justice
- C) Issue Management Teams
- D) ATAT
- E) Whipsaw Assessment
- F) Promoter
- G) Participant or Investor

Column B

- 6) ATAT group manager who provides oversight and acts as a central coordination point
 - 5) Enjoins promoters and participants
 - 7) Cross functional team which provides guidance needed to treat the issue consistently throughout the nation
 - 2) An arrangement sold and/or distributed by an individual, promoter, or preparer to a U.S. taxpayer, that is created to obtain tax benefits not allowable by law
 - 1) Assessed against multiple related entities
 - 3) Individual who distributes or sells the tax benefit
 - 4) An individual who pays for an illegal tax benefit
-

Accessing Offshore Funds

Introduction

Your instructor will provide instructions to assess the Offshore Collection Techniques Course 31629 through a link on the Advanced Tech SharePoint site or at: http://www.irsvideos.gov/Player.aspx?node_id=932

Material is provided here in case of technology difficulties.

Accessing Funds

Although unreported funds in an offshore bank account may be earning interest or used for investment purposes, the taxpayer usually wants access to the money. The taxpayer can use several methods to access the funds. The most common methods are:

- Fraudulent loans
 - Credit and debit cards
-

Fraudulent Loans

In some instances a shell company is established in the same locality as an offshore bank account. This may be due to local laws requiring a “business reason” to have a bank account. These companies are called international business corporations (IBC).

To access funds through a fraudulent loan, the taxpayer’s IBC makes a loan to the taxpayer. The funds are wire transferred to the taxpayer’s U.S. bank account. Since these wired funds are allegedly loans, they are not taxable.

Many times ownership of the IBC is through bearer shares, so it is very difficult to prove the loan is a complete sham. A bearer share is an unregulated equity security wholly owned by whoever holds the physical stock certificate. Promoters may provide their clients with loan documents to make the transaction appear legitimate.

When examining bank statements, look for wire transfers or questionable deposits. These could reflect fraudulent loans. Bank statements may reveal large and repetitive deposits indicating that those are not loans, but merely disbursements to the taxpayer. Secure copies of the wiring instructions for wire transfer deposits to locate the name and location of the offshore bank.

Continued on next page

Accessing Offshore Funds

Introduction Direct the participants to access the Offshore Collection Techniques Course 31629 through the link on the Advanced Tech SharePoint site or http://www.irsvideos.gov/Player.aspx?node_id=932

Information is provided here in case of technology difficulties. You may wish to briefly review the material presented in the video with the participants, also.

The video covers the following sections of material:

- Accessing Offshore Funds
- Levy Action Related to Offshore Accounts
- Repatriation of Assets
- Writ of *Ne Exeat Republica*

Accessing Funds



Show slide #4-17 and discuss the two common ways taxpayers access funds from offshore accounts

Fraudulent Loans

Explain why fraudulent loan schemes are difficult to trace. Emphasize bank statements need to be reviewed, and wire transfer deposits should be scrutinized. Discuss the data that may be found in wiring instructions (name/location of bank; account name; account number).

Continued on next page

Accessing Offshore Funds, Continued

Credit and Debit Cards

One of the most popular methods in recent years to access offshore funds is the use of a bankcard. Once the foreign bank account is established, the taxpayer receives a bankcard. The taxpayer uses the bankcard to withdraw cash and pay for everyday expenses. Primary card processors are Visa and MasterCard. Internet banking is also a growing trend.

Credit bureau reports may contain the card vendor location. You may be able to issue a levy to attach the account if there is a correspondent branch in the U.S.

Accessing Offshore Funds, Continued

Credit and Debit Cards

Point out credit and debit cards are a quick and easy way to access offshore funds. Stress credit reports may show the credit card. However, bank records with wire transfers may be a better source.

Levy Action Relating to Offshore Accounts

Levy on Domestic Branch

A notice of levy must never be served outside the United States (U.S.). However, if the foreign bank has a branch in the U.S., a levy may be served and may attach to funds held outside of the U.S.

Area Counsel approval is necessary before this type of levy action.

Add the following statement to the front of the levy: “The Area Director intends to attach funds held outside the U.S. or U.S. Territory”.

Access Treasury Regulation section 301.6332-1(a) (2) subsections (i) and (ii) and IRM 5.21.3.2 to review the criteria for a levy on a domestic branch.

Note: Treasury regulations (26 C.F.R.), commonly referred to as Federal tax regulations, can be accessed through :

<http://www.irs.gov/Tax-Professionals/Tax-Code,-Regulations-and-Official-Guidance>

It is helpful, but not required, to know the account number on which you are attempting to levy. If the account number is not known, Counsel may approve the levy if it can be established the account is still open. Documents showing recent deposits or withdrawals can be used as evidence.

Branches and Subsidiary Corporations

Before serving a levy on a domestic office of a foreign bank, determine where the taxpayer opened the offshore account and if the account is held by a subsidiary corporation of the foreign bank.

Counsel makes an important distinction between

- a foreign bank with U.S. branches, and
- a foreign bank operating in the U.S. through a subsidiary corporation.

The home office of a bank and its branches can be interrelated. However, the parent corporation of a bank and its subsidiary corporations are generally considered separate entities.

Continued on next page

Levy Action Relating to Offshore Accounts

**Levy on
Domestic
Branch**



Show slide #4-18. Direct the participants to access and review the requirements of Treasury Regulation section 301.6332-1(a) (2) using the link in the course book and IRM section 5.21.3.2. Stress Counsel approval is required before issuing the levy.

Review IRM 5.21.3.2(5) and stress the importance of including this statement on the levy.

**Branches and
Subsidiary
Corporations**

Review the distinctions between bank operating structures.

Continued on next page

Levy Action Relating to Offshore Accounts, Continued

Operating Through Branches

For foreign banks with U.S. branches:

- A home office of a foreign bank may be required to honor a levy served on it and may be liable on an account if the account was opened at one of its U.S. branches.
 - It is not clear if a U.S. branch of a foreign bank is liable on an account opened at the home office of a foreign bank.
-

Operating Through Subsidiary Corporations

For foreign banks operating in the U.S. through subsidiary corporations:

- Only the corporation at which the account was opened is subject to the levy.
 - If the account was opened at a U.S. bank which is a subsidiary corporation of a foreign bank, the parent corporation would probably not be held liable if funds were removed from the U.S.
-

Levy Enforcement

It is likely all levies of this type will need to be enforced in court. Therefore, clearly document the case file with all relevant facts and show compliance with the requirements imposed by Treasury Regulation section 301.6332-1(a) (2). In these types of cases, refer the matter to Counsel for enforcement without issuing a Form 668-C, *Final Demand*.

Continued on next page

Levy Action Relating to Offshore Accounts, Continued

**Operating
Through
Branches**

Discuss the effect of opening an account with a foreign bank in the U.S. or at the home office.

**Operating
Through
Subsidiary
Corporations**

Discuss the effect of a levy on foreign banks operating through subsidiary corporations in the U.S.

**Levy
Enforcement**

Stress all levy enforcement should be approved by Counsel before enforcing a levy in a foreign country.

Continued on next page

Levy Action Relating to Offshore Accounts, Continued

Levy Not Enforced

If the offshore bank is in a jurisdiction with criminal laws preventing compliance with the levy, it will probably not be enforced as a matter of policy. However, there is an advantage to serving a levy in these situations. The financial institution may freeze the account, providing some security the money will be available if a repatriation order is pursued. Further, if the account is frozen, the taxpayer may be willing to cooperate with the IRS or agree to a settlement because they no longer have access to the funds. Any settlement in this situation would require coordination and approval by Counsel.

Levy Served on Union Bank of Switzerland

- In 1995, District Counsel successfully secured a \$6,000,000 Tax Court Decision against a taxpayer.
- Counsel immediately referred the case to an RO because they were concerned the taxpayer would take steps to liquidate assets to avoid collection of the liability.
- The taxpayer had sold two real properties and the proceeds had been deposited with the Union Bank of Switzerland (UBS) at a branch in Switzerland.
- The RO obtained counsel approval for jeopardy levy on a domestic branch of UBS.
- A levy was served to the branch manager of the Los Angeles branch of UBS.
- UBS did not honor the levy, and the levy was referred for enforcement.
- Although the levy was legally enforceable, National Office Chief Counsel refused to authorize enforcement on policy grounds.
- Swiss law provides for criminal sanctions against individuals who, under Swiss jurisdiction, honor our levy.
- It is IRS policy that we will not enforce levies in this situation.
- Even though the levy was not enforced, UBS froze the account and a repatriation order was sought.

Note: *United States v. First National City Bank*, 379 U.S. 378 (1965) is often cited in support of the government's authority to exercise control over funds located overseas.

Levy Action Relating to Offshore Accounts, Continued

**Levy Not
Enforced**

Discuss possible benefits to serving a levy even if it is not enforced.

**Levy Served on
Union Bank of
Switzerland
UBS**

Review the example. Highlight the potential benefit of serving the levy even if it is not enforced.

Repatriation of Assets

Suit to Repatriate Property

A suit to repatriate property to the U.S. is a civil action brought in a United States district court. IRC section 7402(a) implicitly recognizes the authority for this litigation.

A suit to repatriate property requires:

- An enforceable tax liability. A suit to reduce the tax claim to judgment should be considered as a collateral action.
 - Evidence of offshore assets that can be used to satisfy the tax liability.
 - Evidence:
 - Domestic assets reachable by levy are not sufficient to satisfy the tax liability.
 - The Government will be able to get personal jurisdiction over the taxpayer before bringing the suit.
-

Pre-Referral Actions and Alternatives

Before recommending a suit seeking a repatriation order:

- Exhaust meaningful enforcement against domestic property
 - Determine the nature, value and location of the foreign property
 - Document this information in the case file
 - Serve a levy on the domestic bank branch if the property is held in a foreign banking institution with a United States branch. Enforce the levy as needed.
 - Check to see if the United States has a collection treaty with the country where the property is located. If so, the treaty may be used to collect rather than the suit. Tax treaty information is available at <http://www.irs.gov/Businesses/International-Businesses/United-States-Income-Tax-Treaties---A-to-Z>
 - Consult with local and International Counsel.
-

Continued on next page

Repatriation of Assets

Suit to Repatriate Property



Show slides #4-19 and #4-20. Discuss the essential elements of a suit to repatriate property. Point out a suit to reduce the tax claim to judgment, enforce the tax liens on domestic property, and appoint a receiver or issue a writ of *ne exeat republica* may be collateral actions.

Pre-Referral Actions and Alternatives

Discuss and explain the items listed. All domestic actions must be exhausted. Explain the revenue officer should secure credit card information and a Passport History Report to aid in the investigation. Consult with Counsel before placing an individual on the Homeland Security List when a suit to repatriate assets is being considered.

Continued on next page

Repatriation of Assets, Continued

Repatriation Order

A repatriation order is a court order directing a taxpayer to return an asset to the United States or face contempt proceedings. If the taxpayer refuses to comply with the order, the taxpayer can be jailed until the asset is repatriated.

Example

Revenue Officer (RO) Pickens receives a Balance Due for \$2 million on Raymond Grant for his 2011 Form 1040. The Bal Due is a result of an Examination audit. During the investigation, RO Pickens discovers Mr. Grant moved millions of dollars in assets to an offshore trust during 2011, 2012 and 2013. Mr. Grant rents a small apartment in Atlanta, GA. His bank account is less than \$500. Mr. Grant does not own a car and his only IRP income is social security.

RO Pickens contacts Counsel to discuss a repatriation order. Since Mr. Grant is located in the U.S., the court has personal jurisdiction over him. The court could order Mr. Grant to repatriate the assets or face contempt charges.

Appointment of Receiver

The possibility of a repatriation order must be considered along with other possible actions that fit the facts and circumstances of the case.

For example, consider the possibility of appointing a receiver under IRC section 7402(a) in conjunction with a repatriation order.

Benefits of appointing a receiver include:

- An added level of security when the asset is repatriated.
 - A greater likelihood any funds collected will be distributed correctly.
 - The receiver, often an attorney, has an incentive to collect. If they do not collect, they do not get paid.
-

Continued on next page

Repatriation of Assets, Continued

Repatriation Order



Show slide #4-21 and describe the actions needed before seeking a repatriation order.

Review the example. Point out Counsel should be consulted when considering a repatriation order.

Appointment of Receiver

Discuss the benefits of the appointment of a receiver in concert with the repatriation order.

Continued on next page

Repatriation of Assets, Continued

Concurrent Actions

As appropriate, recommend a combination of concurrent actions.

Example

Maureen Anson has domestic assets to foreclose, as well as an offshore bank account. Consider recommending a combination of actions including:

- A suit to enforce the tax lien on domestic property, along with a suit to reduce the tax claim to judgment.
- A suit to obtain a repatriation order.
- The appointment of a receiver to marshal the assets.
- If circumstances warrant, a writ of *ne exeat republica*.

Before making a final decision, consult with Counsel and International Counsel to discuss options.

Goal

A successful repatriation action will result in a court order for the taxpayer to bring the offshore assets back into the jurisdiction of the court so they may be used to satisfy the tax liability. Failure to comply with the court order may result in a finding of contempt against the taxpayer.

Repatriation of Assets, Continued

Concurrent Actions



Show slide #4-22 and review the example. Emphasize when working with offshore assets, several actions must often be done concurrently.

Goal



Show Slide #4-23 and discuss the end result of a repatriation order.

Writ *Ne Exeat Republica*

Introduction A writ *ne exeat republica* is an action authorized by IRC section 7402(a). It prevents a person from removing themselves from the jurisdiction of the court. Therefore, it is only used when all other remedies are exhausted.

Use and Nature A writ *ne exeat republica* is a suit action against a person, not property. It is used to prevent a person from leaving the United States when it can be shown the person:

- is about to leave the U.S.,
- is unlikely to return to the U.S., and
- has conveyed their property, or concealed cash or other property so it has already, or soon will be, taken out of the United States.

A writ *ne exeat republica* is rarely used.

Concurrent Actions A writ *ne exeat republica* is usually filed in conjunction with other enforcement action, such as a suit to:

- reduce tax claim to judgment,
- foreclose tax lien,
- repatriate property, or
- enforce a summons.

It must be shown the proposed actions will not be enforceable unless the person is prevented from removing themselves, or their assets, from the United States. It must also be shown the assets are needed to satisfy the tax liability. For example, if the taxpayer is moving liquid assets offshore, but domestic real property subject to the lien has sufficient equity to cover the liability, a writ *ne exeat republica* will not be ordered.

It is a temporary remedy, and not intended to operate as a perpetual restriction upon a defendant's freedom of movement.

Reference See IRM 5.21.3.3 and the *Suit and Litigation Guide* for criteria, procedures, and examples.

Writ Ne Exeat Republica

Introduction



Show slide #4-24 and describe a writ *ne exeat republica*.

Use and Nature



Ask the participants:

Has anyone successfully secured a writ *ne exeat republica* while working a case?

Possible Responses:

Responses will vary. If yes, ask them to briefly share their experience.

Concurrent Actions

Stress absent any other actions, a suit to reduce the tax claim to judgment is appropriate.

Reference

Direct the participants to access IRM 5.21.3.3 and the *Suit and Litigation Guide* for criteria, procedures, and examples.

Penalties

Introduction

This part of the lesson describes penalties often associated with ATAT cases. These penalties are asserted by Examination. However, as a revenue officer you may be assigned to an investigation to assist Examination before the assertion of the penalties. Your role in these pre-assessment investigations is covered later in the lesson.

Penalty for Promoting Abusive Tax Shelters

IRC section 6700 provides a penalty which applies to persons who promote abusive tax shelters. The penalty is the lesser of

- \$1,000 for each activity, or
- 100 percent of the income derived, or to be derived, from the activity.

The organization of the tax shelter itself and each subsequent sale of an interest in the tax shelter are considered separate activities. Because the penalty is imposed on each sale, the total amount of the penalty can be staggering.

Terminology

A **promoter** can be any person, including an individual, corporation, trust, partnership, or estate.

The **tax shelter** may be in the form of an entity such as a trust, plan, or other arrangement, such as a family trust, from which a tax benefit may be derived. The plan or arrangement does not need to be an investment. It can be merely a scheme to avoid tax.

Type of Conduct

The IRC section 6700 penalty applies to two distinct types of conduct.

- Making a false statement about the
 - allowability of any deduction or credit,
 - excludability of any income, or
 - securing of any other tax benefit by participating in a plan or arrangement which the promoter knows is false and fraudulent as to any material matter.
 - Making a gross valuation overstatement as to any material matter in connection with the organization or sale of an interest in the shelter.
-

Continued on next page

Penalties

Introduction

Explain this section gives an overview of various penalties Examination often asserts in ATAT cases.

Penalty for Promoting Abusive Tax Shelters



Show slide 4-25 and explain how the penalty assessed against promoters of abusive tax shelters is determined.

Terminology

Emphasize the:

- Promoter is not necessarily an individual.
 - Tax shelter can be in several different forms.
-

Type of Conduct



Direct the participants to access IRC section 6700 at <http://www.law.cornell.edu/uscode/text/26/6700> or through Lexis/Nexis. This may require some assistance from instructors. Review the types of conduct subject to penalty under IRC section 6700.

Continued on next page

Penalties, Continued

Aiding and Abetting Penalties

IRC section 6701 provides a \$1,000 penalty against persons who knowingly aid and abet in the understatement of the tax liability of another person. The penalty applies if all three of the conditions in IRC section 6701(a) are met.

- The person aids, assists in, procures, or advises with respect to, the preparation or presentation of any portion of a return, affidavit, claim, or other document in a tax matter;
 - The person knows, or has reason to believe, such portion will be used in connection with any material matter arising under the Internal Revenue Code; and
 - The person knows such portion, if used, would result in an understatement of another person's tax liability.
-

IRC Section 6694 Penalties

A penalty may be asserted against a return preparer under IRC section 6694. The specific penalties are

- IRC section 6694(a) for understatement due to unreasonable positions, or
- IRC section 6694(b) for understatement due to willful or reckless conduct.

Penalties for these violations are imposed by Examination. The revenue agent must make a referral to the Office of Professional Responsibility for IRC section 6694(b) violations. Referrals for section 6694(a) are discretionary and should be based on a pattern of failing to meet the required penalty standards under that section.

IRC Section 6695 Penalties

Examination may assess penalties against a return preparer under IRC section 6695. The specific penalties are

- IRC section 6695(a) for failure to furnish a copy of return or claim for refund to the taxpayer
 - IRC section 6695(b) for failure to sign return or claim for refund
 - IRC section 6695(c) for failure to furnish identifying number on return or claim for refund
 - IRC section 6695(d) for failure to retain copy or list
 - IRC section 6695(e) for failure to file correct information returns
-

Continued on next page

Penalties, Continued

Aiding and Abetting Penalties

State the amount of the penalty. Continue to review IRC section 6701 on line.



Show slide #4-26 and explain the conditions describing how a person aids and abets understatement of tax. Emphasize all three conditions must be met to assert a penalty under IRC section 6701.

IRC Section 6694 Penalties



Show slide #4-27 and describe IRC section 6694 penalties. Stress these penalties are asserted by Examination.

IRC Section 6695 Penalties



Show slides #4-28 and #4-29. Review when Examination can assess IRC section 6695 penalties. Point out the penalty for section 6695(e) applies to any person required to make a return under IRC section 6060.

Continued on next page

Penalties, Continued

**One Penalty
Only**

The penalties under IRC sections 6700, 6701, 6694, and 6695 cannot be imposed together.

High Priority

IRM 5.20.7.1.(3) and IRM 5.20.1.10(1)a. state, “Any IRC 6700 or IRC 6701 penalty assessment received in collection will be treated as a priority H100 case and worked expeditiously.” H100 is a designation given to promoter cases.

Penalties, Continued

One Penalty Only Stress only one penalty can be assessed.

High Priority Point out these cases are treated as high priority.

Pre-Assessment Investigation

Introduction Revenue officers may assist Examination during the pre-assessment phase of promoter and participant investigations for a variety of reasons. The ATAT coordinator will ensure a Compliance Initiatives Project (CIP) is created on ICS.

Evaluate Collection Potential You may be asked to evaluate collection potential before a revenue agent proceeds with an examination of additional tax periods. This evaluation may be through

- the use of internal sources,
- Accurint research,
- internet research,
- public records searches, or
- contact with third parties.

In addition, you may be asked to view, determine the value of, or determine the equity in assets. You may also be asked to evaluate the jeopardy potential for an assessment being considered by Examination.

Full Compliance You may be asked to research full compliance on the taxpayer and all related entities involved in the audit.

If you find delinquent return (Del Ret) or balance due (Bal Due) accounts, coordinate your efforts with Examination before attempting collection.

Securing Information The provisions of IRC section 7602(c), *Notice of Contact of Third Parties*, must be followed when working ATAT cases. In a pre-assessment investigation, the appropriate taxpayer notification is normally made by Examination. Verify this with the revenue agent before making third-party contacts.

If you have questions about the methods used to secure information, seek guidance from Advisory, Disclosure or Area Counsel after reviewing IRM 5.20.3.

Continued on next page

Pre-Assessment Investigation

Introduction Point out to the participants when they are assigned a pre-assessment investigation, a CIP needs to be created on ICS.

Evaluate Collection Potential Explain revenue officers may be asked to evaluate collection potential before a revenue agent proceeds with an examination of additional tax periods.

Full Compliance Discuss with the participants the scope of the full compliance review needed.

Securing Information Emphasize the need to adhere to the IRC section 7602(c) third-party contact provisions when working ATAT cases.

Continued on next page

Pre-Assessment Investigation, Continued

Participant Lists

During civil and criminal investigations of ATAT promoters, the investigator is required to secure a list of persons participating in these schemes. It is important to secure the participant list as early into the promoter investigation as possible. Once secured, case building information is summarized and submitted to the Ogden or Philadelphia campuses to prepare the participant cases for classification.

Obtaining Participants List

The list of participants may be secured with a written request. However, a summons and subsequent litigation will likely be necessary.

Usually the revenue agent investigating the case secures the participants list. However, you may obtain information from the taxpayer about a potential promotion or scheme in response to field or other contacts. Participants may be identified through

- website links,
 - Accurint research,
 - third-party contacts,
 - county record checks,
 - litigation, and
 - materials received from the taxpayers.
-

Continued on next page

Pre-Assessment Investigation, Continued

**Participant
Lists**

Briefly discuss the uses for the promoter's participant list.

**Obtaining
Participants
List**

Point out revenue agents usually secure the participant list information.

Continued on next page

Pre-Assessment Investigation, Continued

Injunction Procedures

The IRS is authorized to enjoin persons from preparing tax returns under IRC section 7407 and to enjoin promoters of abusive tax shelters from preparing or selling shelters under IRC section 7408.

Injunctions are sought in Federal courts. These cases go through IRS Counsel to the Department of Justice (DOJ). The Fraud technical advisor and LDC should be involved in case development. You can, upon occasion, be required to testify in court, particularly if the preparer or promoter files a suit.

Referral to DOJ

When the promoter or preparer investigation is completed, a revenue agent develops the case for referral to DOJ. At this point, with group manager approval, you can close the assigned CIP.

Assessment of the Penalty

If the promoter or preparer is enjoined, DOJ returns the case to the revenue agent. The revenue agent recommends assessment of the penalty. At this point, you should be notified of the pending assessment and

- determine if a potential nominee investigation should proceed, and
- file a NFTL at the earliest possible time.

If an injunction was obtained, also follow up on the promoter's compliance with the injunction order.

Pre-Assessment Investigation, Continued

Injunction Procedures

Point out IRC sections 7407 and 7408 authorize injunction procedures for IRS.

Referral to DOJ

Point out to the participants that they can close a CIP when the case goes to DOJ.

Assessment of the Penalty



Show slide #4-30 and emphasize the revenue officer should monitor for the assessment to post and file the NFTL as soon as possible. Nominee investigation may also be appropriate before penalty assessment.

Revenue Officer Responsibility

Case Assignment

You may be assigned promoter investigations and participant cases. The examination of an abusive scheme participant is not limited to a single individual. It includes the examination of any entity created in furthering the scheme, such as a

- trust,
 - corporation,
 - partnership, or
 - limited liability company (LLC).
-

Administrative Files

When you receive an ATAT case, request the Examination administrative files. Usually the administrative files are requested on IDRS using command code (CC) ESTAB.

The administrative files generally contain

- copies of the pertinent tax returns,
- whipsaw notices and related returns,
- the revenue agent's work papers,
- records summonsed by the revenue agent, including bank records and other information secured from the taxpayer or third parties, and
- Form 906, *Closing Agreement on Final Determination Covering Specific Matters*.

A thorough review of the file will generally help:

- establish an appropriate plan of action,
 - identify distrainable assets,
 - identify bank sources, and
 - identify possible third-party contact sources.
-

Continued on next page

Revenue Officer Responsibility

**Case
Assignment**

Point out to the participants when assigned promoter investigations and participant cases, it usually involves related entities.

**Administrative
Files**

Emphasize the importance of obtaining and reviewing the Examination administrative files when assigned an ATAT case.



Show slide #4-31 and review the information contained in the administrative files.

Continued on next page

Revenue Officer Responsibility, Continued

Identification of Assets

Identifying assets in ATAT cases can be a daunting task. Many schemes use various means to hide assets. When working ATAT cases, you will frequently encounter

- multiple entities.
- abusive or sham entities.
- both domestic entities and entities located in offshore tax haven countries.
- nominee, alter ego or transferee individuals or entities.
- complex tax strategies regarding stock sales, loan assumptions, inflating the basis and claiming subsequent losses.
- employee leasing schemes.
- other sophisticated abusive schemes.

The current assets of the ATAT taxpayer may be substantially different than those identified in the Examination administrative files.

The taxpayer may transfer their assets to newly created nominees or transferee entities before you receive the collection case. In working ATAT cases, you will frequently conduct nominee or transferee investigations. That is why it is important to follow up on the assets identified in the administrative files.

Form 906

Occasionally, the taxpayer agrees with the revenue agent's findings regarding an abusive scheme and signs a Form 906, *Closing Agreement on Final Determination Covering Specific Matters*. A Form 906 may be negotiated between the taxpayer, Appeals and Area Counsel. It usually details the abusive scheme and states the nominee, alter ego or transferee aspects of the investigation.

If the case is closed as agreed and whipsaw assessments are not made against potential nominee entities, the Form 906 is evidence in a nominee, alter ego or transferee recommendation. The Form 906 is generally in the Examination administrative file.

Continued on next page

Revenue Officer Responsibility, Continued

Identification of Assets Emphasize it is not unusual for the taxpayer to transfer the assets identified by Examination in the administrative file. Point out the administrative file can be useful in establishing a pattern that will assist in a nominee or transferee recommendation.

Form 906 Direct the participants to access Form 906, *Closing Agreement on Final Determination Covering Specific Matters*, on-line. Briefly discuss the use of the form.

Continued on next page

Revenue Officer Responsibility, Continued

Follow the Money

“Follow the money” means to trace the flow of specific funds. ATAT cases usually involve the transfer of income or assets from one source to another, and many times through multiple sources. The intent is to make it appear the funds or assets do not belong to the taxpayer.

Start with the latest bank records in Examination’s administrative file and trace the taxpayer’s bank accounts to the present time. This may require summoning and tracing funds from closed bank accounts to new accounts. Frequently, the funds pass through third parties.

Trace assets, including real and personal property, from the latest point in the administrative file to the present time. This may also require summoning third-party records to establish a nominee situation.

Identify Expense

Another method to “follow the money” is to identify a current expense or income source of the taxpayer and follow the flow of funds to the current bank account being used by the taxpayer. This will also require summonses. It may involve accounts not held in the taxpayer’s name.

Chex Systems

One way to follow the money is by summoning the records of Chex Systems, Inc. Chex Systems is a company that acts as a private reporting agency for banks. Chex Systems can be a great tool when looking for new bank accounts a taxpayer recently opened. When a consumer tries to open up a bank account within the United States, their name and social security number (SSN) is usually run through Chex Systems. The most useful document we can get from Chex Systems is a consumer report. To obtain one, issue a summons to Chex Systems who generates and mails the report to the person summoning the information. A sample summons is included as Exhibit #1. A sample report is found at:

<https://www.consumerdebit.com/consumerinfo/us/en/chexsystems/samplereport.htm>

When reviewing the Chex Systems report, the two most useful sections are “Reported Information,” which is a list of banks that reported the taxpayer for inappropriate actions (such as bouncing checks). Once reported, most banks do not open up checking accounts for the reported individual. One of the most important sections is “Inquiries Instituted by Consumer Action.” This section lists the banks where a taxpayer tried to open an account. This section may produce new levy sources. More information on Chex Systems can be found on their webpage,

<https://www.consumerdebit.com/consumerinfo/us/en/index.htm>

Continued on next page

Revenue Officer Responsibility, Continued

Follow the Money

Explain the concept of “following the money.” Point out the Examination administrative file is a starting point.

Identify Expense

Explain another way to follow a money trail is to trace an expense or income source back to a current bank account.



Ask the participants:

What are some current expenses or income sources that may be traced?

Possible Responses:

- *Property taxes*
- *Utility bills*
- *Telephone bills*
- *Current income sources include Social Security payments, wages, other payments from individuals or businesses for which the taxpayer worked*

Ask for examples of how participants located taxpayer income or assets by “following the money.”

Chex Systems

Direct the participants to access the link for the sample Chex Systems report and review the information. Point out Chex Systems generally has consumer information only and not corporate information. When looking for corporate accounts, one must summons using the individual officer(s) information.

Emphasize this is a third-party summons and if issued for any other purpose than to aid in collection, it requires third-party notice procedures be followed.

Emphasize Chex Systems retains inquiries only for a limited time, so it is best to summons early for these records.

Continued on next page

Revenue Officer Responsibility, Continued

Summons Following the money often leads to accounts not held in the taxpayer's name, or to sources where the taxpayer appears to have no connection. You will need to summons documents pertaining to these transactions.

To summons documents that on the surface do not appear to pertain to the taxpayer, you must first consider if a nexus exists. A nexus is a connection or link between at least two actions or issues.

Establish the Nexus If the records held by a third party are in a name other than the taxpayer's, you must first establish and document a nexus. Otherwise, there is a presumption you do not have a right to the records. You establish the nexus by the facts uncovered in the investigation. To establish the nexus consider all potential sources for information. When you go to a source, such as a financial institution, structure the summons to obtain records from accounts in nominee names. See IRM 5.20.4.1(10) for more information.

Nexus Example 1 You are assigned a case involving Daryl Mercer. During an interview with Mr. Mercer, you learn he transferred his residence to his spouse, Kathy Mercer, for no consideration. Mrs. Mercer is unemployed. However, she pays all household expenses from her bank account. You have established sufficient nexus to summons Mrs. Mercer's bank records. You document the nexus in the ICS case history.

Nexus Example 2 You are assigned a case involving Michael Rusk, an officer of HRH Inc. That fact alone does not give you the right to summons the bank account records of HRH Inc. However, Mr. Rusk is not cooperative.

Courthouse research shows the deed for Mr. Rusk's residence is in his name, but property tax records show the billing and payment in the name of HRH Inc. At this point, you established a sufficient nexus to the HRH Inc. bank account to summons the records. Document the nexus in the ICS case history.

The payment shows the possibility the account is in a nominee name and may serve as a source of collection.

Continued on next page

Revenue Officer Responsibility, Continued

Summons Emphasize summonses need to be used in most ATAT case.



Show slide #4-32 and define nexus

Establish the Nexus Emphasize the need to establish a nexus to summons documents. Review IRM 5.20.4.1(10). Emphasize the need to document the nexus in the ICS history when issuing a summons that on the surface does not appear to pertain to the taxpayer.

Nexus Example 1 Review the example. Discuss how the nexus was established before serving the summons.

Nexus Example 2 Review the example. Discuss how the nexus was established before serving a summons.

Continued on next page

Revenue Officer Responsibility, Continued

Nexus Example 3

You are assigned a Bal Due of \$200,000 for 2012 on Donna Benton. A county check shows Ms. Benton lives in a house purchased on March 25, 2011. The house was purchased directly in the name of the Glynn Trust. Ms. Benton did not sign any of the documents on record at the county recorder related to the purchase.

You notice that on March 23, 2011, Ms. Benton sold a home that was in her name. You serve a summons for the escrow/title records from that sale. The records show the funds from the sale were wired and used to purchase the property now owned by Glynn Trust. This establishes the nexus needed to summons the escrow records for the property purchased by Glynn Trust. You document the nexus in the ICS case history.

Since a nexus is established between Ms. Benton and Glynn Trust, you can summons third-party records that may be in the name of the purchaser. These records may include

- property tax payments,
- insurance payments and policies, and
- utility payments.

The summoned information may lead to additional nominees or third parties currently responsible for the utility payments and property tax payments. Since a nexus was established, you can summons information and bank records on the third parties or potential nominees/transferees.

The goal is to follow the money to determine if evidence shows Ms. Benton is the true owner of the property held in the name of Glynn Trust.

Revenue Officer Responsibility, Continued

Nexus Example 3

Review the example. Point out an initial summons may lead to other third-party summonses.



Ask the participants:

Why did the nexus between Donna Benton and Glynn Trust need to be established?

Correct Answer:

Living in the property is not sufficient by itself since Ms. Benton could be renting from a valid trust.

Point out if the documents recording the sale to Glynn Trust were signed by Donna Benton as trustee, that might be a nexus enough to summons the escrow file.



Ask the participants:

Are there other investigative steps that could be used to establish the nexus?

Possible Responses:

- *Interviewing the party that sold the property to the Glynn Trust to determine if Ms. Benton was involved in the purchase of the property.*
 - *From the seller or multiple listings, identify the real estate agent involved in the sale. Interview the agent to determine if Ms. Benton was involved in the purchasing of the property.*
 - *Request Form 1041 for the trust to determine if Ms. Benton is the fiduciary.*
-

Frivolous Schemes

Prominent Schemes

There are a great number of abusive schemes. Many frivolous schemes are simply variations of the more prominent schemes.

Some prominent schemes are:

<ul style="list-style-type: none">• IRC section 302/318 basis shifting• Abusive trusts (Aegis)• Conveyed assets (CARDS)• Charitable trusts• Identity theft	<ul style="list-style-type: none">• Home-based business• Offshore employee leasing• Slavery reparation• IRC section 861• Intermediary transaction• False Form 1099 refunds
--	---

Definitions of these schemes can be accessed at:

<http://mysbse.web.irs.gov/Collection/toolsprocesses/CollATAT/Arguments/default.aspx>

Abusive Trusts

A number of promoters sell a variety of abusive trust schemes. There are two primary variations of abusive trust schemes:

- Multiple trusts to reduce taxable income to zero
 - Questionable trusts
-

Multiple Trusts

To reduce taxable income to zero, taxpayers at times illegally use

- deductions for personal expenses paid by the trust,
- depreciation deductions for a personal residence,
- high fees for trust packages, and
- other questionable deductions.

Promoters market the use of multiple trusts and other entities and charge a fee for the trust package and trust return preparation. The trusts may be domestic or foreign, or a combination. The idea is any remaining taxable income after the claimed deductions would flow to the taxpayer's minor children or to a foreign trust.

Continued on next page

Frivolous Schemes

Prominent Schemes



Show slides #4-33 through #4-35. Briefly review the list of prominent schemes.

Abusive Trust



Show slide #4-36 and explain there are two primary variations of abusive trust schemes.

Multiple Trusts Briefly explain how the multiple trust schemes work.

Continued on next page

Frivolous Schemes, Continued

Questionable Trusts

Another abusive trust scheme involves the use of questionable trusts. Sometimes a questionable trust is referred to as a

- pure trust,
- constitutional trust,
- sovereign trust,
- unincorporated or unorganized business organization (UBO), or
- common law trust.

The taxpayer purchases the promoter's pure trust and places their business in it. According to the scheme, the taxpayer is no longer required to report income earned by the business on any Federal tax return. The taxpayer becomes the manager of the trust. The promoter also claims assets placed into a pure trust are no longer assets of the taxpayer, despite the taxpayer having control as manager of the trust.

Charitable Trusts

The term "charitable trust" is a generic name for any trust used for charitable purposes. The rules regarding charitable entities are very complex and easily manipulated for the benefit of the taxpayer and promoter. In an abusive scheme, the promoter claims the trust as a charitable trust when in fact the trust benefits the taxpayer.

Most promoters know charitable entities are less likely to be audited and the audits are generally more restrictive. Abusive trusts classified as charitable trusts sell because the promoters can

- feign charitable intent, and
- make taxpayers feel good about giving to needy causes while benefiting and enriching themselves.

Promoters and taxpayers using exempt or non-profit organizations as part of their scheme may be assessed penalties for refusing to file returns for tax exempt or non-profit organizations. These penalties can be substantial.

Continued on next page

Frivolous Schemes, Continued

**Questionable
Trusts**

Briefly explain how the questionable trust scheme works.

**Charitable
Trusts**

Explain the “charitable” trust as designed by the promoter is for the benefit of the taxpayer.

Point out promoters know charitable entities are less likely to be audited.

Briefly explain why charitable trusts are a popular choice for abusive trust promoters.

Continued on next page

Frivolous Schemes, Continued

Identity Theft Identity theft occurs when someone uses your personal information such as your name, Social Security Number or other identifiable information, without your permission, to commit fraud or other crimes. In many cases, an identity thief uses a legitimate taxpayer's identity to fraudulently file a tax return and claim a refund.

Home-Based Business Scheme In a home-based business scheme, the promoter claims personal expenses are deductible as business expenses. If the taxpayer does not already have a business, a Schedule C "home business" is set up. The purpose is to sell tax relief promotions to others, much like a multi-level marketing scheme. The taxpayer pays a monthly fee to the promoter. In turn, the taxpayer becomes a promoter by recruiting new clients.

Since the home is used for business operations, personal expenses are deducted such as

- groceries,
- commuting expenses,
- children's education expenses,
- salaries,
- pet care,
- utilities,
- clothing, and
- entertainment.

Continued on next page

Frivolous Schemes, Continued

Identity Theft Explain combating identity theft is now a Service priority. New efforts are in place to address fraud prevention, early detection and victim assistance.

Home-Based Business Scheme Briefly explain the home-based business scheme.

Continued on next page

Frivolous Schemes, Continued

Offshore Employee Leasing

In general, this arrangement involves a series of steps involving domestic and foreign parties.

- First, the taxpayer, an individual, purports to terminate an existing employment relationship with a domestic corporation that may be owned, either directly or indirectly, in whole or in part by taxpayer. This domestic corporation is the service recipient corporation.
- The taxpayer then purports to enter into an employment relationship with a foreign corporation incorporated and managed in a country with which the U.S. has an income tax convention. This foreign corporation is the foreign leasing corporation.
- The foreign leasing corporation purports to lease the right to taxpayer's services in the U.S. to a domestic corporation. This domestic corporation is the domestic leasing corporation.
- The domestic leasing corporation, in turn, purports to lease the taxpayer's services to the service recipient corporation.
- Before entering into the arrangement, the taxpayer has little or no business relationship with either the foreign leasing corporation, or with the domestic leasing corporation.
- After entering into the arrangement, the taxpayer continues to provide substantially the same services for the service recipient corporation the taxpayer provided before entering into the arrangement. Thus, the interposition of foreign leasing corporation and domestic leasing corporation has no significant effect on the taxpayer's performance of services for the service recipient corporation.
- The service recipient corporation makes payments to the domestic leasing corporation for the taxpayer's services.
- The domestic leasing corporation makes payments to the taxpayer for services in an amount substantially less than the amount paid to the domestic leasing corporation by the service recipient corporation.
- After deducting a fee for its participation in the arrangement, the domestic leasing corporation remits to the foreign leasing corporation, in return for taxpayer's services, the remainder of the amount paid to the domestic leasing corporation by the service recipient corporation

Continued on next page

Frivolous Schemes, Continued

Offshore Employee Leasing



Show slides #4-37 through #4-40. Review the steps in offshore employee leasing.

Emphasize the taxpayer did not have a relationship with either leasing corporation before entering into this scheme.

Continued on next page

Frivolous Schemes, Continued

IRC Section 861

Employers indicate they are legally not required to withhold from employees' wages because of a misinterpretation of IRC section 861. Promoters sell this scheme indicating wages are not taxable. Promoters indicate "sources" of taxable income do not include companies owned by Americans. They also say IRC section 861 allegedly defines all source of income from within the U.S. Most identified promoters of this scheme are enjoined or currently under investigation by IRS. The Ogden Frivolous Filer Unit continues to receive leads on suspicious Forms 941. These are sent to the field to be researched and worked.

Not a Citizen or In a Federal Enclave

A variation of the IRC section 861 argument is

- a revocation of U.S. citizenship for that of a state, territory or as a "free" person.
 - that only persons within a Federal enclave, such as the District of Columbia or Federal employees are subject to taxation.
-

Continued on next page

Frivolous Schemes, Continued

IRC Section 861 Explain the IRC section 861 scheme is used to claim an employer is not required to withhold tax from their employees' pay. Point out it is based on a misinterpretation of the IRC.

Not a Citizen or In a Federal Enclave Explain a claim of not being subject to taxation is one of the most common schemes.

Continued on next page

Frivolous Schemes, Continued

Intermediary Transaction An intermediary transaction is a method of avoiding corporate level taxes in the disposal of a corporation and its assets. In a typical intermediary transaction, either the shareholder of the target corporation or a buyer interested in acquiring the corporate assets arranges for a third party to acquire the stock and then sell the assets out of the acquired corporation. These transactions are structured to conceal income and create additional entities to absorb the tax liability. The created entities are insolvent by the end of the transaction. The only method to collect the tax is through transferee assessment.

Example

Former shareholders of Racine Corporation used an intermediary transaction tax shelter to avoid paying the tax on a \$5 million gain from a sale of appreciated marketable securities. The securities were worth \$6 million.

The former shareholders received 90 percent of the sale proceeds. The promoters kept 10 percent. The inflated basis property was transferred to Racine and sold to shelter the gain. No tax was paid.

Racine did not respond to any Examination correspondence. A statutory notice was issued in October 2009. Racine did not file a petition, so the tax was assessed. Racine is defunct and has no assets. The only method for collecting the tax is through a transferee assessment against the former shareholders.

Additional information on intermediary transactions can be found at <http://mysbse.web.irs.gov/Collection/toolsprocesses/CollATAT/TechProc/IMT/default.aspx>

Continued on next page

Frivolous Schemes, Continued

**Intermediary
Transaction**

Explain intermediary transactions require a third party who may become the subject of a promoter referral. Point out LB & I has a unit similar to the LCD. It is the office of Tax Shelter Analysis (OTSA).

Review the example. Stress a transferee assessment is the only way to collect the tax.

Continued on next page

Frivolous Schemes, Continued

False Form 1099 Refunds

Individuals are making refund claims based on a bogus theory the Federal government maintains secret accounts for U. S. citizens and the taxpayers can gain access to the accounts by issuing Form 1099, Original Issue Discount (OIC) forms to the IRS.

Additional information is found at:

<http://mysbse.web.irs.gov/Collection/toolsprocesses/CollATAT/TechProc/1099OID/default.aspx>

Compliance Initiatives

Compliance initiatives are an effective tool used by Examination to combat frivolous schemes. Once a scheme and its participants are identified, Examination issues a letter to the participants of the scheme. The letter states they were identified as a participant and offers an opportunity to voluntarily contact the Service and file amended returns showing the correct amount of tax due.

Participants who do not come forward are audited by Examination. Taxpayers seeking to participate in a compliance initiative must make satisfactory arrangements with the Service to pay the tax due. Revenue officers are contacted and work with the taxpayer on resolving the liability. Once a satisfactory arrangement is made, Examination executes a Form 906, an assessment is made, and the Examination case is closed.

Son of Boss (SOB) was the first compliance initiative of this nature.

Continued on next page

Frivolous Schemes, Continued

False Form 1099 Refunds

Explain in this scheme the taxpayer may file a fake Form 1040 or, more commonly, a Form 1041 Trust return in conjunction with Form 1099-OID (Original Issue Discount) to justify a false refund claim on the corresponding return.

Compliance Initiatives



Show slide #4-41 and stress the positive impact and cooperative effort between Examination and Collection

Continued on next page

Frivolous Schemes, Continued

Captive Insurance Company Arrangements

A more recent compliance initiative is Captive Insurance Company Arrangements. In this scheme, promoters market Captive Insurance Company arrangements (“Captive”) as a legitimate means of tax savings. A Captive is an insurance company established and controlled by a taxpayer directly or through related parties. It can be offshore or domestic. The Captive underwrites certain insurance needs of the taxpayer or related entities. The taxpayer deducts premiums paid to the Captive.

Not all captive arrangements are abusive. For additional information. See: <http://mysbse.web.irs.gov/exam/tip/captiveinsurance/default.aspx>

Frivolous Schemes, Continued

**Captive
Insurance
Company
Arrangements**

Explain Captive Insurance Company Arrangements and Examination makes the determination as to whether the Captive is abusive.

Explain ATAT schemes are always evolving. Research and discuss the latest schemes that may not be covered in this material.

ATAT Group Activity

Background

Revenue Officer Custer receives Bal Dues on Adrian and Dale Larimer for 2007 and 2008 totaling \$1,200,000. Both are prepared as substitutes for return (SFR) by Examination. Adrian Larimer is a self-employed geologist in the oil business and works internationally. No final demand was sent. You mail a separate Letter 1058 to each.

In response to the Letter 1058, you receive a letter stating Adrian Larimer is not a person whose income is taxable under IRC section 861. Dale Larimer mails you a copy of a Vow of Poverty with the Ellis Church of Holy Salvation.

A check of local property records shows Adrian and Dale Larimer transferred 4.3 acres and their residence to the Fallon Lane Land Trust on February 3, 2005. There is a mortgage with Howard National Bank recorded in the Larimers' name on August 13, 1991. There is no release of the mortgage recorded.

You request a copy of the revenue agent's administrative file. You find there is a whipsaw assessment against the Fallon Lane Land Trust for approximately the same amounts as the Forms 1040. You mail a Letter 1058 on the land trust since one was not previously sent. The Larimers respond with a letter stating the trust is a grantor trust and not subject to taxation.

A review of credit bureau information shows a current mortgage held by Howard National Bank in the amount of \$312,000. No new information was found on Accurint.

Internet research on the Ellis Church of Holy Salvation shows it is a scheme promising to untax all true believers. It was established by Bishop John Salem with an address in Utah.

Question 1

Based on the facts given, what is your resolution plan?

Answer:

Continued on next page

ATAT Group Activity

Instructions



Direct the participants to work in small groups for 15 minutes to complete the activity. . Establish calls for them on OCS so they can discuss the activity as a group. Reconvene on the virtual site. Participants should be prepared to cite where they found the answers to the questions and to justify their responses

Answers

Reconvene the class and review the answers as a large group. Ask each group to volunteer answers and discuss why they answered as they did. This activity should take not longer than 15 minutes.

Question 1 Answer

Based on the facts given, what is your resolution plan?

Suggested Answer:

- Based on the response to the Letter 1058, file a NFTL against the Larimers’.
 - Based on records research and the whipsaw assessment, file a NFTL against the Fallon Lane Land Trust after checking IDRS. Request assignment of the trust accounts.
 - Refer the Ellis Church of Holy Salvation to the Lead Development Center.
 - Summons Howard National Bank for copies of the application, loan committee reports and any canceled checks that evidence payment and the mortgage balance.
 - Request IRP information from IDRS for purposes of levy.
 - Request the trust return to see assets and who the fiduciary officer is.
-

Continued on next page

ATAT Group Activity, Continued

Question 1
(continued)

Answer (continued):

**Additional
Information**

Courthouse records reveal the address of Howard National Bank. You summons that company for records, including canceled checks retained to evidence proof of payments. The summonsed information includes three canceled checks among the payments from an account in the name of The Ellis Church of Salvation.

The property is valued at \$650,000 and there is \$125,000 owed.

Question 2

What are your next actions?

Answer:

Continued on next page

ATAT Group Activity, Continued

Question 2
Answer

What are your next actions?

Answer: Summons the bank records on the Larimer's account in the name of The Ellis Church of Holy Salvation. Stress the importance of documenting the Nexus in the ICS case history.

Begin preparation of either a suit to foreclose on the Federal tax lien or seizure of the real property.



Ask the participants:

Which remedy, administrative seizure or suit, would be best and why?

Discuss :

- Judicial Approval for principal residence seizure may be possible. Consult with the group manager and Advisory.
- This real property does not have a clear title based on the transfer. A suit to foreclose may be beneficial to secure a higher price for the property and clear title.
- The taxpayers and trust may challenge the liabilities in court.
- DOJ may reduce liabilities to judgment as a concurrent action to the foreclosure.
- Discuss requirements of Interim Guidance SBSE-05-413-0035, Principal Residence Suit Foreclosure. (This may be incorporated into IRM revisions 5.17.4, 5.17.12, 25.3.2)

Continued on next page

ATAT Group Activity, Continued

**Additional
Information**

You summons the bank records of The Ellis Church of Holy Salvation. The signature card shows both Adrian and Dale Larimer are authorized to sign on the account. A review of the canceled checks and bank statements show that in 2010, the Larimers wired a total of \$500,000 to a bank in Belize.

Question 3

What is your updated working resolution?

Answer:

ATAT Group Activity, Continued

Question 3
Answer

What is your updated working resolution?



Answer:

- Contact Area Counsel regarding the need for a nominee/alter ego lien and levy. Based on the bank records showing the wire transfers to Belize, check on the feasibility of a repatriation suit to order the Larimers to return the money to a U.S. bank or to place it on deposit with the Court.
 - Since Adrian Larimer works internationally and the amount of money presently in an overseas account, consider a writ of *ne exeat republica* to place the Larimers' passports in the custody of the court and prevent them from leaving the country.
 - Access a CBRS report and check FBAR compliance.
 - Research the bank in Belize to determine if it has a domestic branch where a levy could be served. See IRM 5.21.3.
 - Determine if the US has a tax treaty with Belize in order to issue an Exchange of Information Request.
 - Make a request to search the Offshore Credit Card Database for any foreign credit cards by sending an encrypted email to *SBSE Area# OCI Research with the subjects name, SSN, and DOB.
-

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Exhibit 1 – Summons

	<h1 style="margin: 0;">Summons</h1>
In the matter of <u>Henry Adephi, 1741 Pace Drive, Patterson, LA 70086</u>	
Internal Revenue Service (Division): <u>Training Data Area 1</u>	
Industry/Area (name or number): <u>Training Data Area 1 (25)</u>	
Periods: <u>Form 941 for the quarterly periods ending December 31, 2006 and December 31, 2007</u>	
The Commissioner of Internal Revenue	
To: <u>Custodian of Records, ChexSystems</u>	
At: <u>7805 Hudson Road, Suite 100, Woodbury, MN 55125</u>	
You are hereby summoned and required to appear before <u>Robert Wiley,</u> an officer of the Internal Revenue Service, to give testimony and to bring with you and to produce for examination the following books, records, papers, and other data relating to the tax liability or the collection of the tax liability or for the purpose of inquiring into any offense connected with the administration or enforcement of the internal revenue laws concerning the person identified above for the periods shown.	
Please provide reports, documents and information for Henry Adelphi (000-80-0725), including but not limited to ChexSystems consumer reports and any joint and individual accounts for the time period from January 1, 2008 to the present.	
Do not write in this space	
Business address and telephone number of IRS officer before whom you are to appear: <u>PO Box 1, 600 S. Maestri St., New Orleans LA 70030 (999) 555-3177</u>	
Place and time for appearance at <u>PO Box 1, 600 S. Maestri St., New Orleans LA 70030</u>	
 <p>Department of the Treasury Internal Revenue Service www.irs.gov</p> <p>Form 2039 (Rev. 10-2010) Catalog Number 21405J</p>	on the <u>28th</u> day of <u>August</u> , <u>2009</u> at <u>2:00</u> o'clock <u>p</u> m. Issued under authority of the Internal Revenue Code this <u>9th</u> ^(year) day of <u>July</u> , <u>2009</u> _(year)
_____ Signature of issuing officer	_____ Revenue Officer Title
_____ Signature of approving officer (if applicable)	_____ Group Manager Title
Original — to be kept by IRS	

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Lesson 4

Abusive Tax Avoidance Schemes and Promotions

Objectives

Advanced
Technical Training
for Revenue Officers
Level 2

SB/SE

- Describe the types of ATAT cases.
- Describe how ATAT cases are identified, developed and assigned.

Lesson 4

ATAT Coordinators

Advanced
Technical Training
for Revenue Officers
Level 2

SB/SE

- **Central point of contact**
- **Coordinate support of audits**
- **Assign/route cases**

Lesson 4

ATAT Coordinators

Advanced
Technical Training
for Revenue Officers
Level 2

SB/SE

- **Resource for ATAT revenue officers**
- **Liaison between Collection and Examination**
- **Elevate ATAT issues**

Lesson 4

Issue Management Terms

Advanced
Technical Training
for Revenue Officers
Level 2

SB/SE

- **Focal point for issue**
- **Guidance to treat issue consistently**

ATAT

Advanced
Technical Training
for Revenue Officers
Level 2

SB/SE

**Any type of plan sold to
U.S. taxpayers to obtain tax
benefits not allowable by law**

Promoter

Advanced
Technical Training
for Revenue Officers
Level 2

SB/SE

**Individual who sells
arrangements where full
asset benefit retained while
reducing or eliminating tax**

Lesson 4

Participant or Investor

Advanced
Technical Training
for Revenue Officers
Level 2

SB/SE

**Individual who pays promoter
for illegal tax reduction
benefit or scheme**

Lesson 4

Whipsaw Situation

Advanced
Technical Training
for Revenue Officers
Level 2

SB/SE

- **Two or more parties may be liable**
- **All possibly liable parties are assessed**
- **Assessed amounts may differ**

Lesson 4

Whipsaw Assessment

Advanced
Technical Training
for Revenue Officers
Level 2

SB/SE

- Tax may be assessed multiple times
- Collect tax only once

Lesson 4

Cross Reference Code

Advanced
Technical Training
for Revenue Officers
Level 2

SB/SE

Input of TC 971 with

- AC 266 on key case
- AC 267 on related cases

Lesson 4

ATAT Cases

Advanced
Technical Training
for Revenue Officers
Level 2

SB/SE

Involve

- Promoter or preparer and participant
- Positions contrary to Federal tax laws

Lesson 4

Preparer Investigations

Advanced
Technical Training
for Revenue Officers
Level 2

SB/SE

Suspicious raised by

- results of audits
- preparer's actions and statements
- promoter investigations

Lesson 4

Participant Scheme Use

Advanced
Technical Training
for Revenue Officers
Level 2

SB/SE

- **Stop filing and paying**
- **Minimize tax**
- **Hide income and assets**
- **Avoid payment or collection**

Lesson 4

Lead Development Center

Advanced
Technical Training
for Revenue Officers
Level 2

SB/SE

Centralizes:

- Receipt and development of referrals
- Authorization and referral to Examination

Lesson 4

Lead Development Center

Advanced
Technical Training
for Revenue Officers
Level 2

SB/SE

Centralizes:

- Internet research
- Building cases for investigation

Website Information

Advanced
Technical Training
for Revenue Officers
Level 2

SB/SE

- **Frequently asked questions**
- **LDC referral form**
- **List of promoters and schemes**
- **LDC employee information**

Lesson 4

ATAT Sub-codes

Advanced
Technical Training
for Revenue Officers
Level 2

SB/SE

- **309 — ATAT**
- **310 — OVCI**
- **311 — VDP**
- **312 — IT**
- **313 — Promoter**
- **314 — SOB**

Lesson 4

ATAT Sub-codes

Advanced
Technical Training
for Revenue Officers
Level 2

SB/SE

- **315 — GSI**
- **316 — FPLP**
- **317 — Cold Case**
- **318 — Easement Settlement**
- **319 — 1099-OID**
- **320 — Distressed Asset**
- **321 — IRC 6707A**

Lesson 4

IRC Section 6700

Advanced
Technical Training
for Revenue Officers
Level 2

SB/SE

Lesser of

- **\$1,000 for each activity**
- **100% of income from activity**

Lesson 4

Penalty Conduct

Advanced
Technical Training
for Revenue Officers
Level 2

SB/SE

- **Making a false statement about**
 - **Allowability of deduction or credit**
 - **Excludability of income**
 - **Securing tax benefit from known fraudulent plan**

Lesson 4

Penalty Conduct

Advanced
Technical Training
for Revenue Officers
Level 2

SB/SE

- **Making a gross valuation overstatement in connection with the organization or sale of a shelter**

Lesson 4

IRC Section 6701

Advanced
Technical Training
for Revenue Officers
Level 2

SB/SE

\$1,000 penalty

Penalty Conditions

Advanced
Technical Training
for Revenue Officers
Level 2

SB/SE

Person

- Prepares or presents in a tax matter
- Knows will be used in a matter under the IRC

Lesson 4

Penalty Conditions

Advanced
Technical Training
for Revenue Officers
Level 2

SB/SE

Person

- **Knows will result in tax understatement**

IRC Section 6694

Advanced
Technical Training
for Revenue Officers
Level 2

SB/SE

- **Return preparer penalty for understatement due to unreasonable position**
- **Willful or reckless conduct**

Lesson 4

IRC Section 6695

Advanced
Technical Training
for Revenue Officers
Level 2

SB/SE

Failure to:

- **Furnish return or claim for refund**
- **Sign return or claim**
- **Furnish identifying number**

Lesson 4

IRC Section 6695

Advanced
Technical Training
for Revenue Officers
Level 2

SB/SE

Failure to:

- Retain copy or list
- File correct information returns

Assessment of Penalty

Advanced
Technical Training
for Revenue Officers
Level 2

SB/SE

- **RO determines if:**
 - **prompt assessment needed**
 - **potential nominee**

Assessment of Penalty

Advanced
Technical Training
for Revenue Officers
Level 2

SB/SE

- RO files NFTL
- If injunction obtained RO follows up on compliance

Administrative File

Advanced
Technical Training
for Revenue Officers
Level 2

SB/SE

- Tax returns
- Whipsaw related returns
- RA workpapers
- Summoned records
- Closing agreement

Lesson 4

Nexus

Advanced
Technical Training
for Revenue Officers
Level 2

SB/SE

**A connection or link
between at least two
actions or issues**

Lesson 4

Frivolous Schemes

Advanced
Technical Training
for Revenue Officers
Level 2

SB/SE

- **Basis shifting**
- **Anderson Ark (AAA)**
- **Abusive trusts (Aegis)**
- **ADA credit**
- **Conveyed assets**

Lesson 4

Frivolous Schemes

Advanced
Technical Training
for Revenue Officers
Level 2

SB/SE

- **Charitable trusts**
- **Corporate soles**
- **Home-based business**
- **Offshore employee leasing**

Lesson 4

Frivolous Schemes

Advanced
Technical Training
for Revenue Officers
Level 2

SB/SE

- **Slavery reparation**
- **IRC section 861**
- **Son of Boss**
- **Intermediary transaction**

Lesson 4

Abusive Trusts

Advanced
Technical Training
for Revenue Officers
Level 2

SB/SE

Two primary variations

- Multiple trusts
- Questionable trusts

Lesson 4

Offshore Employee Leasing

Advanced
Technical Training
for Revenue Officers
Level 2

SB/SE

- **TP terminates employment with service recipient corp**
- **TP enters into employment with foreign leasing corp**
- **Foreign corp leases TP's services to domestic leasing corp**

Lesson 4

Offshore Employee Leasing

Advanced
Technical Training
for Revenue Officers
Level 2

SB/SE

- **Domestic leasing corp leases TP's services to service recipient corp**
- **TP works for service recipient corp**
- **Service recipient corp pays domestic leasing corp for TP's services**

Lesson 4

Offshore Employee Leasing

Advanced
Technical Training
for Revenue Officers
Level 2

SB/SE

- **Domestic leasing corp pays TP less than paid by service recipient corp**
- **Domestic leasing corp deducts fee for services**

Lesson 4

Offshore Employee Leasing

Advanced
Technical Training
for Revenue Officers
Level 2

SB/SE

- **Domestic leasing corp
pays foreign leasing corp
remainder paid by service
recipient corp**

Compliance Initiatives

Advanced
Technical Training
for Revenue Officers
Level 2

SB/SE

- **Voluntary compliance**
- **Exam audits TP**
- **Cooperative effort between
Exam and Collection**

Lesson 4

**Advanced
Technical Training for
Revenue Officers
Level 2**

Lesson 4

**Abusive Tax Avoidance
Schemes and Promotions**

Lesson 4

Abusive Tax Avoidance Schemes and Promotions

Overview

Introduction This lesson provides an overview of the abusive tax avoidance transaction (ATAT) program. It introduces you to aspects of ATAT cases. However, it does not provide detailed instruction for working ATAT cases.

Lesson Materials

- Coursebook

References

- IRC sections 6700, 6701, 7402, 7407 and 7408
- IRM 4.32, *Abusive Tax Avoidance Transactions*
- IRM 5.20, *Abusive Tax Avoidance Transactions*
- IRM 20.1.6, *Preparer/Promoter Penalties*

Continued on next page

Lesson 4

Abusive Tax Avoidance Schemes and Promotions

Instructor Information

Introduction



Show slide #4-1 and introduce the lesson title and topic.

This lesson provides an overview of the abusive tax avoidance transaction (ATAT) program. It introduces the participants to aspects of ATAT cases. It is not designed to provide detailed instruction for working ATAT cases.

Lesson Data

The following table provides helpful information:

Estimated Time	<ul style="list-style-type: none">• Five hours
Participant Materials	<ul style="list-style-type: none">• Coursebook
Instructor Material	<ul style="list-style-type: none">• Instructor Guide
References	<ul style="list-style-type: none">• Course 5719-003, <i>Abusive Tax Avoidance Transactions Training Guide</i>• IRC sections 6700, 6701, 7402, 7407 and 7408• IRM 4.32, <i>Abusive Tax Avoidance Transactions</i>• IRM 5.20, <i>Abusive Tax Avoidance Transactions</i>• IRM 20.1.6, <i>Preparer/Promoter Penalties</i>
Supplies	<ul style="list-style-type: none">• Whiteboard and markers• Flipchart and markers• Computer projection system and screen• Slides

Continued on next page

Overview, Continued

Objectives

At the end of this lesson, you will be able to:

- Describe the types of ATAT cases.
 - Describe how ATAT cases are identified, developed and assigned.
-

In This Lesson

This lesson contains the following topics:

Topic	See Page
Background of ATAT	4-3
Definitions	4-5
Whipsaw Assessments	4-6
ATAT Cases	4-8
Penalties	4-12
Pre-Assessment Investigation	4-15
Revenue Officer Responsibility	4-18
Frivolous Schemes	4-25
ATAT Group Activity	4-31
Exhibit 1, <i>Summons</i>	4-34

Instructor Information, Continued

Objectives



Show slide #4-2 and present the lesson objectives.

At the end of this lesson, the participant will be able to:

- Describe the types of ATAT cases.
 - Describe how ATAT cases are identified, developed and assigned.
-

Note to Instructor

Before presenting this lesson, review all URLs and websites to ensure the sites are still valid.

In This Lesson This lesson contains the following topics:

Topic	See Page
Background of ATAT	4-3
Definitions	4-5
Whipsaw Assessments	4-6
ATAT Cases	4-8
Penalties	4-12
Pre-Assessment Investigation	4-15
Revenue Officer Responsibility	4-18
Frivolous Schemes	4-25
ATAT Group Activity	4-31

Background of ATAT

Collection Priority

The Collection Program Letter has identified abusive tax avoidance transactions as a top priority for several years. Collection's role in ATAT is important in ensuring future compliance to tax laws. Revenue officers and revenue agents work closely to ensure abusive schemes are addressed properly and expeditiously.

ATAT Coordinators

Each area has one or more Collection ATAT coordinators who provide oversight and act as a central coordination point. The Collection coordinator is responsible for ensuring ATAT cases are controlled and transitioned properly from Examination to Collection. Their responsibilities include

- providing a central point of contact,
- coordinating Collection support of Examination audits involving ATAT cases,
- ensuring appropriate assignment and routing of cases from Examination,
- acting as a resource for ATAT revenue officers,
- acting as a liaison between Collection and Examination, and
- elevating ATAT issues to the appropriate person.

A current list of Collection ATAT group manager contacts is available on the ATAT home page. You access this information by:

Step	Action
1	Access http://abusiveshelter.web.irs.gov/
2	Click "Abusive Tax Schemes"
3	Click "Groups-Collection"

Continued on next page

Background of ATAT

Collection Priority

Explain ATAT is a priority throughout the IRS operating divisions.

ATAT Coordinators



Show slides #4-3 and #4-4. Discuss the purpose of ATAT coordinators. Advise the participants ATAT promoter cases may be handled jointly between Examination and Collection.



Direct the participants to access the list of ATAT Collection group manager contacts by following the steps provided in the coursebook.

Continued on next page

Background of ATAT, Continued

Department of Justice Involvement

The Department of Justice (DOJ) plays a crucial role in combating abusive promotions and schemes. They have successfully obtained injunctions against abusive scheme promoters. A list of enjoined promoters is available on the ATAT home page. You access this information by:

Step	Action
1	Access http://abusiveshelter.web.irs.gov/
2	Click “Abusive Tax Schemes”
3	Click “Promoters Enjoined”

DOJ press releases regarding ATAT cases may be viewed as follows:

Step	Action
1	Access http://abusiveshelter.web.irs.gov/
2	Choose “DOJ Press Release” under the heading “Other Resources”

Issue Management Teams

Issue management teams are specialized cross functional teams charged with developing a strategic approach to address a specific ATAT or ATAT-related issues. They provide

- a focal point for a specific issue, and
- the guidance needed to treat the issue consistently throughout the nation.

Information regarding specific enjoined promoters or issue management teams may be found at <http://abusiveshelter.web.irs.gov>

Revenue officers can determine the specific scheme by matching the project code shown on TXMOD with the project codes listed on the website.

Inventory Size

Despite increased efforts by the Internal Revenue Service and the Department of Justice, abusive tax promotions and the number of persons who participate in abusive tax schemes continues to increase.

Background of ATAT, Continued

Department of Justice Involvement

Explain the Department of Justice (DOJ) has successfully enjoined promoters and participants in ATAT schemes from using and selling these schemes. Point out DOJ acts quickly on IRS referrals, filing for and receiving court-ordered injunctions.



Direct the participants to

- click “Promoters Enjoined” under “Abusive Tax Schemes” on the ATAT website.
- look at the list of promoters DOJ has successfully enjoined.
- access the most recent DOJ press release by following the steps provided in the coursebook.

Issue Management Teams



Show slide #4-5 and discuss the role of issue management teams.



Direct the participants to click “Issue Management Teams” (IMT) under “Abusive Tax Schemes” to see the list of issues, current projects, project codes and contacts.

Inventory Size

Point out the number of ATAT cases continues to rise as more promoters and participants are identified.

Definitions

Abusive Tax Avoidance Transaction

An abusive tax avoidance transaction (ATAT) is any type of plan or arrangement sold by an individual, promoter or preparer to a U.S. taxpayer, that is created to obtain tax benefits not allowable by law.

Promoter

A promoter is an individual who distributes material, hosts seminars, or sells arrangements where the participant can supposedly retain full benefit from personal or business assets while reducing or eliminating taxes.

Participant or Investor

A participant or investor is an individual who pays a promoter for an illegal tax reduction benefit or scheme. The participant may or may not know it is illegal, but usually does.

Whipsaw Assessment

Whipsaw assessments are assessments of tax from the same income that are assessed against multiple related entities. Since the income was filtered back and forth through multiple entities, it is called whipsaw. While the tax may be assessed two or more times, the Service only collects it once.

Definitions

**Abusive Tax
Avoidance
Transaction**



Show slide #4-6 and define abusive tax avoidance transaction (ATAT). Emphasize IRS wants to identify both promoters and participants.

Promoter



Show slide #4-7 and define a promoter.

**Participant
or Investor**



Show slide #4-8 and define a participant or investor.

**Whipsaw
Assessment**

Briefly define whipsaw assessment.

Whipsaw Assessments

Whipsaw Situation

A whipsaw situation exists when two or more individuals or entities may be liable for the tax on a given transaction. Usually the IRS cannot determine with certainty which individual or entity owes the tax. Making an incorrect decision subjects the IRS to the possibility of assessing against one party who may ultimately be determined not to be liable but only after the statute of limitations for assessment against the other potentially liable party(s) has expired. To prevent the possible loss by choosing the wrong party, the IRS assesses or seeks to assess against all possibly liable parties with the goal of collecting only once. The amount of tax assessed against each individual or entity may differ because their deductions may differ.

Additional information about whipsaw assessments is available in IRM 5.20.6.

Description

Examination generally has no difficulty in determining that the income sheltered by the scheme is taxable to the individuals. In the past, they issued statutory notices of deficiency taxing the income to the individuals. Those notices were invariably upheld by the courts. Unfortunately, that practice did not aid in collecting the tax because the resulting assessment was against the individual, who supposedly has no income and no assets. No assessments were made against the taxpayer's related entities. For example, their business trust generating the income or the family trust holding legal title to the property. This resulted in Collection needing to

- file nominee liens and serve nominee levies,
- initiate suits to set aside fraudulent transfers,
- foreclose on the Federal tax (nominee) lien, or
- use other collection tools such as administrative transferee assessments.

As a result of this, Examination may issue whipsaw statutory notices of deficiency.

Continued on next page

Whipsaw Assessments

Whipsaw Situation



Show slide #4-9 and describe a whipsaw situation.

Emphasize:

- A whipsaw assessment is assessed against all related entities. This can be another individual or an entity such as a trust, a corporation or an LLC.
 - The amount of each assessment may differ because the deductions available to each individual or entity may differ.
-

Description

Discuss how the whipsaw assessment process evolved.

Emphasize:

- Before the use of whipsaw assessments, Examination assessed the tax only against the individual.
 - With all assets held by the related party such as a spouse or trust, the revenue officer was forced to:
 - ▶ file nominee liens and serve nominee levies.
 - ▶ initiate suits to set aside fraudulent transfers.
 - ▶ foreclose on nominee liens.
 - ▶ pursue transferee assessments through administrative or civil suit.
-

Continued on next page

Whipsaw Assessments, Continued

Whipsaw Statutory Notices of Deficiency

For abusive trust cases, Examination may issue whipsaw statutory notices of deficiency. This means the subjects refuse to cooperate and the Service is unable to accurately determine the correct tax owed by each entity. The Service issues notices of deficiency taxing the same income to each entity. One notice of deficiency is issued to the individual and one to each related entity. The primary individual case is referred to as the key case. The related cases are referred to as the whipsaw cases.

In response to whipsaw notices of deficiency, the taxpayer usually defaults or petitions Tax Court. If they default, the Service makes assessments against each related entity. This allows collection directly from any of the related entities without filing nominee liens.

If the taxpayer petitions Tax Court, the Service obtains a Federal court decision stating the arrangement is a sham. In either case, the whipsaw process makes collection of the assessments much easier than if only one entity was assessed.

Use of Whipsaw Assessments

Although multiple related whipsaw assessments are made, you collect it only once. Thus, it is similar to the trust fund recovery penalty or related transferee assessments. Coordinating related cases is essential to monitor payments and prevent over-collection of the liability.

Cross Reference Coding

As of May 10, 2004, Examination began requesting the input of transaction code (TC) 971 to cross-reference key and related whipsaw cases. A TC 971 action code (AC) 266 is input on the key case and a TC 971 AC 267 is input on any related entity. The key case will have a TC 971 AC 266 on each module that references each related entity involved in the whipsaw assessment.

Whipsaw Assessments, Continued

Whipsaw Statutory Notices of Deficiency

Explain Examination may be unable to determine which entity in a related case owes what amount of tax. In a whipsaw assessment, notices of deficiency are issued to each entity.

Use of Whipsaw Assessments



Show slide #4-10 and emphasize a whipsaw assessment is only collected once.

Point out this is similar to a trust fund recovery penalty.

Cross Reference Coding



Show slide #4-11 and discuss cross-reference codes on whipsaw assessments.

ATAT Cases

Description An ATAT case involves a promoter or a preparer and a participant of an abusive tax avoidance transaction. Collection ATAT cases involve many of the same issues found in general program collection cases. However, they typically involve individuals who support or promote positions contrary to Federal tax laws.

For revenue officers, ATAT cases include Bal Due, Del Ret, courtesy investigation (OI) or Compliance Initiative Project (CIP) assignments. Grade levels are assigned based on complexity and established criteria.

Promoters Once an abusive scheme promoter comes to the attention of the IRS, a referral is made to the Lead Development Center (LDC). Referrals often result from the examination of participant returns. Referrals can come through other sources, including revenue officers who learn about a promoter's activities through their investigations.

The LDC determines whether or not there is sufficient information to approve a promoter investigation. The LDC makes its determination in conjunction with Criminal Investigation (CI) and Counsel. If CI has an ongoing criminal investigation or believes one is justified, the civil and criminal cases are coordinated. When the LDC determines a civil promoter investigation is warranted, the accumulated file is sent to a revenue agent and a local counsel attorney is assigned.

Preparer Investigations Generally, return preparers are not independently investigated unless IRS suspicions are raised

- by the audit results of several of the preparer's clients,
- by the preparer's actions and statements while representing clients during audits, or
- through abusive scheme promoter investigations.

If the IRS initiates an investigation of the preparer's activities, it includes

- audits of returns prepared, and
 - reviews of the preparer's business practices.
-

Continued on next page

ATAT Cases

Description



Show slide #4-12 and discuss the general description of an ATAT case.

Promoters

Discuss the process used to handle promoter referrals.

Preparer Investigations



Show slide #4-13 and explain why a preparer is investigated. Explain the usual role of the revenue officer is one of information and fact gathering.

Continued on next page

ATAT Cases, Continued

Preparer Investigations (continued)

Revenue officers do not conduct preparer investigations, but may be asked to assist a revenue agent by securing information or making contacts. You may make a referral to the LDC if you secure information regarding a preparer using an abusive scheme.

Participant Reasons

Most participants in abusive schemes use one or more schemes to

- stop filing tax returns;
 - stop paying tax;
 - minimize the amount of tax they are required to pay;
 - hide income and assets from tax authorities;
 - avoid payment or enforced collection by tax authorities.
-

Lead Development Center

The Lead Development Center (LDC) centralizes the

- receipt and development of referrals on abusive tax schemes and promoters.
 - authorization and referral of IRC sections 6700 and 6701 investigations to Examination, Planning and Special Programs (PSP) for assignment to the field. The LDC works referrals received from within the IRS and external sources.
 - internet research to identify leads and detect sites, promoters, and promotional materials that market abusive tax schemes over the web.
 - builds cases to support the nationwide investigations.
-

Website Information

LDC information is available by clicking “Lead Development Center” on the <http://abusiveshelter.web.irs.gov/> website. The information includes

- frequently asked questions on parallel investigations.
 - LDC referral form.
 - list of promoters and the scheme they promote.
 - contact telephone numbers for LDC employees.
-

Continued on next page

ATAT Cases, Continued

Participant Reasons



Show slide #4-14 and review the reasons participants use abusive schemes.

Lead Development Center



Show slides #4-15 and #4-16. Explain the role of the Lead Development Center (LDC).

Website Information



Show slide #4-17 and discuss the information from the LDC available on the ATAT website.

Continued on next page

ATAT Cases, Continued

LDC Referrals Referrals on abusive tax schemes and promoters should be submitted to the LDC through their email address: *ldc@irs.gov. Referrals should include as much information as known on the

- abusive nature and scope of the scheme,
 - involvement of the promoter and any associates in the promotion,
 - relationships with other promoters and promotions, and
 - availability of promotional and sales material.
-

LDC Referral Example During the investigation to locate the assets of Joseph Paine, you discover a website owned by Mr. Paine. The website advertises seminars and information packets for \$1,000. According to the advertisement, the information provides instruction on how to

- respond to the Internal Revenue Service and other creditors.
- “opt out of the system.”

There are testimonials from satisfied customers.

You discuss the case with your manager as a possible referral to the Lead Development Center. If referred, the LDC will check to see if Mr. Paine is attempting to market this scheme to others. If a scheme is reported multiple times, the LDC will make a referral to Examination.

Continued on next page

ATAT Cases, Continued

LDC Referrals	Discuss the information that should be provided when a referral is submitted to the LDC. Point out the email address can be accessed from the abusive shelter website.
----------------------	--

LDC Referral Example	Review the example. Point out the LDC keeps track of promotions and promoters.
-----------------------------	--

Continued on next page

ATAT Cases, Continued

ATAT Sub-Codes

ATAT cases assigned to the field are identified by the following ICS sub-codes:

- 309 for Abusive Tax Avoidance Transactions (ATAT),
- 310 for Offshore Voluntary Compliance Initiative (OVCI),
- 311 for Voluntary Disclosure Program (VDP),
- 312 for Intermediary Transactions (IT),
- 313 for Promoter,
- 314 for Son of Boss (SOB),
- 315 for Global Settlement Initiative (GSI),
- 316 for FPLP Contract/Vendor,
- 317 for Cold Case Project,
- 318 for Easement Settlement Offer,
- 319 for 1099-OID Recovery,
- 320 for LMSB Distressed Asset Trusts,
- 321 for IRC section 6707A, Penalty Assessment

ATAT cases can include Bal Dues, Del Rets, OIs and CIPs. CIPs are used for preassessment investigations, such as when a revenue officer assists a revenue agent on a promoter investigation or for pending field assignments.

See IRM 5.20.2 for more detailed descriptions.

ATAT Cases, Continued

**ATAT
Sub-Codes**



Show slides #4-18 and #4-19. Review the ICS sub-codes used to identify ATAT cases.

Penalties

Penalty for Promoting Abusive Tax Shelters

IRC section 6700 provides a penalty which applies to persons who promote abusive tax shelters. The penalty is the lesser of

- \$1,000 for each activity, or
- 100 percent of the income derived, or to be derived, from the activity.

The organization of the tax shelter itself and each subsequent sale of an interest in the tax shelter are considered separate activities. Because the penalty is imposed on each sale, the total amount of the penalty can be staggering.

Terminology

- A promoter can be any person, including an individual, corporation, trust, partnership, or estate.
 - The tax shelter may be in the form of an entity such as a trust, plan, or other arrangement such as family trust from which a tax benefit may be derived. The plan or arrangement does not need to be an investment. It can be merely a scheme to avoid tax.
-

Type of Conduct

The IRC section 6700 penalty applies to two distinct types of conduct:

- Making a false statement about the
 - ▶ allowability of any deduction or credit,
 - ▶ excludability of any income, or
 - ▶ securing of any other tax benefit by participating in a plan or arrangement which the promoter knows is false and fraudulent as to any material matter.
 - Making a gross valuation overstatement as to any material matter in connection with the organization or sale of an interest in the shelter.
-

Continued on next page

Penalties

Penalty for Promoting Abusive Tax Shelters



Show slide #4-20 and explain how the penalty assessed against promoters of abusive tax shelters is determined.

Terminology

Emphasize the:

- Promoter is not necessarily an individual.
 - Tax shelter can be in several different forms.
-

Type of Conduct



Show slides #4-21 and #4-22. Review the types of conduct subject to penalty under IRC section 6700.

Continued on next page

Penalties, Continued

Aiding and Abetting Penalties

IRC section 6701 provides a \$1,000 penalty against persons who knowingly aid and abet in the understatement of the tax liability of another person. The penalty applies if all three of the following conditions are met:

- The person aids, assists in, procures, or advises with respect to, the preparation or presentation of any portion of a return, affidavit, claim, or other document in a tax matter;
 - The person knows, or has reason to believe, that such portion will be used in connection with any material matter arising under the Internal Revenue Code; and
 - The person knows that such portion, if used, would result in an understatement of another person's tax liability.
-

IRC Section 6694 Penalties

A penalty may be asserted against a return preparer under IRC section 6694. The specific penalties are

- IRC section 6694(a) for understatement due to unreasonable positions, or
- IRC section 6694(b) for willful or reckless conduct.

Penalties for these violations are imposed by Examination. The revenue agent must make a referral to the Office of Professional Responsibility for IRC section 6694(b) violations. Referrals for section 6694(a) are discretionary and should be based on a pattern of failing to meet the required penalty standards under that section.

IRC Section 6695 Penalties

Examination may assess penalties against a return preparer under IRC section 6695. The specific penalties are

- IRC section 6695(a) for failure to furnish a copy of return or claim for refund to the taxpayer
 - IRC section 6695(b) for failure to sign return or claim for refund
 - IRC section 6695(c) for failure to furnish identifying number on return or claim for refund
 - IRC section 6695(d) for failure to retain copy or list
 - IRC section 6695(e) for failure to file correct information returns
-

Continued on next page

Penalties, Continued

Aiding and Abetting Penalties



Show slide #4-23 and provide the amount of the penalty.



Show slides #4-24 and #4-25. Explain the conditions that describe how a person aids and abets understatement of tax. Emphasize all three conditions must be met to assert a penalty under IRC section 6701.

IRC Section 6694 Penalties



Show slide #4-26 and describe IRC section 6694 penalties. Stress these penalties are asserted by Examination.

IRC Section 6695 Penalties



Show slides #4-27 and #4-28. Review when Examination can assess IRC section 6695 penalties. Point out the penalty for section 6695(e) applies to any person required to make a return under IRC section 6060.

Continued on next page

Penalties, Continued

One Penalty Only

The penalties under IRC sections 6700, 6701, 6694, and 6695 cannot be imposed together.

High Priority

IRM 5.20.7.1.(3) states, “Any IRC 6700 or IRC 6701 penalty assessment received in collection will be treated as a priority H100 case and worked expeditiously.” H100 is a designation given to promoter cases.

Penalties, Continued

**One Penalty
Only**

Stress only one penalty can be assessed.

High Priority

Point out these cases are treated as high priority.

Pre-Assessment Investigation

Introduction

Revenue officers may assist Examination during the pre-assessment phase of promoter and participant investigations for a variety of reasons. The ATAT coordinator will ensure a CIP is created on ICS.

Evaluate Collection Potential

You may be asked to evaluate collection potential before a revenue agent proceeds with an examination of additional tax periods. This evaluation may be through

- the use of internal sources,
- Accurint research,
- internet research,
- public records searches, or
- contact with third parties.

In addition, you may be asked to view, determine the value of, or determine the equity in assets. You may also be asked to evaluate the jeopardy potential for an assessment being considered by Examination.

Full Compliance

You may be asked to research full compliance on the taxpayer and all related entities involved in the audit.

If you find delinquent return (Del Ret) or balance due (Bal Due) accounts, coordinate your efforts with Examination before attempting collection.

Securing Information

The provisions of IRC section 7602(c), *Notice of Contact of Third Parties*, must be followed when working ATAT cases. In a pre-assessment investigation, the appropriate taxpayer notification is normally made by Examination. Verify this with the revenue agent before making third-party contacts.

If you have questions about the methods used to secure information, seek guidance from Advisory, Disclosure or Area Counsel after reviewing IRM 5.20.3.

Continued on next page

Pre-Assessment Investigation

Introduction Point out to the participants that when they are assigned a pre-assessment investigation, a CIP needs to be created on ICS.

Evaluate Collection Potential Explain revenue officers may be asked to evaluate collection potential before a revenue agent proceeds with an examination of additional tax periods.

Full Compliance Discuss with the participants the scope of the full compliance review needed.

Securing Information Emphasize the need to adhere to the IRC section 7602(c) third-party contact provisions when working ATAT cases.

Continued on next page

Pre-Assessment Investigation, Continued

Participant Lists

During civil and criminal investigations of ATAT promoters, the investigator is required to secure a list of persons participating in these schemes. It is important to secure the participant list as early into the promoter investigation as possible. Once secured, case building information is summarized and submitted to the Ogden or Philadelphia campuses to prepare the participant cases for classification.

Obtaining Participants List

The list of participants may be secured with a written request. However, a summons and subsequent litigation will likely be necessary.

Usually the revenue agent investigating the case secures the participants list. However, you may obtain information from the taxpayer about a potential promotion or scheme in response to field or other contacts. Participants may be identified through

- website links,
 - Accurint research,
 - third-party contacts,
 - county record checks,
 - litigation, and
 - materials received from the taxpayers.
-

Continued on next page

Pre-Assessment Investigation, Continued

**Participant
Lists**

Briefly discuss the uses for the promoter's participant list.

**Obtaining
Participants
List**

Point out revenue agents usually secure the participant list information.

Continued on next page

Pre-Assessment Investigation, Continued

Injunction Procedures

The IRS is authorized to enjoin persons from preparing tax returns under IRC section 7407 and to enjoin promoters of abusive tax shelters from preparing or selling shelters under IRC section 7408.

Injunctions are sought in Federal courts. These cases go through IRS Counsel to the Department of Justice (DOJ). The fraud technical advisor and LDC should be involved in case development. You can, upon occasion, be required to testify in court, particularly if the preparer or promoter files a suit.

Referral to DOJ

When the promoter or preparer investigation is completed, a revenue agent develops the case for referral to DOJ. At this point, you can close the assigned CIP, with group manager approval.

Assessment of the Penalty

If the promoter or preparer is enjoined, DOJ returns the case to the revenue agent. The revenue agent recommends assessment of the penalty. At this point, the revenue officer should be notified of the pending assessment.

The revenue officer

- determines if a prompt assessment is needed;
- determines if a potential nominee investigation should proceed, and
- files a NFTL at the earliest possible time.

If an injunction was obtained, the revenue officer should also follow up on the promoter's compliance with the injunction order.

Pre-Assessment Investigation, Continued

Injunction Procedures

Point out IRC sections 7407 and 7408 authorize injunction procedures for IRS.

Referral to DOJ

Point out to the participants that they can close a CIP when the case goes to DOJ.

Assessment of the Penalty



Show slides #4-29 and #4-30. Emphasize the revenue officer determines whether prompt assessment is warranted.

Revenue Officer Responsibility

Case Assignment

You may be assigned promoter investigations and participant cases. The examination of an abusive scheme participant is not limited to a single individual. It includes the examination of any entity created in furthering the scheme, such as a

- trust,
 - corporation,
 - partnership, or
 - limited liability company (LLC).
-

Administrative Files

When you receive an ATAT case , request the Examination administrative files. Usually the administrative files are requested on IDRS using command code (CC) ESTAB.

The administrative files generally contain

- copies of the pertinent tax returns,
- whipsaw notices and related returns,
- the revenue agent's workpapers,
- records summonsed by the revenue agent, including bank records and other information secured from the taxpayer or third parties, and
- Form 906, *Closing Agreement*.

A thorough review of the file will generally help:

- establish an appropriate plan of action,
 - identify distrainable assets,
 - identify bank sources, and
 - identify possible third-party contact sources.
-

Continued on next page

Revenue Officer Responsibility

**Case
Assignment**

Point out to the participants that when assigned promoter investigations and participant cases, it usually involves related entities.

**Administrative
Files**

Emphasize the importance of obtaining the Examination administrative files when assigned an ATAT case.



Show slide #4-31 and review the information contained in the administrative files.

Continued on next page

Revenue Officer Responsibility, Continued

Identification of Assets Identifying assets in ATAT cases can be a daunting task. Many schemes use various means to hide assets. When working ATAT cases, you will frequently encounter

- multiple entities.
- abusive or sham entities.
- both domestic entities and entities located in offshore tax haven countries.
- nominee or transferee individuals or entities.
- complex tax strategies regarding stock sales, loan assumptions, inflating the basis and claiming subsequent losses.
- employee leasing schemes.
- other sophisticated abusive schemes.

The current assets of the ATAT taxpayer may be substantially different than those identified in the Examination administrative files.

Although Examination generates whipsaw assessments, the taxpayer may transfer their assets to newly created nominees or transferee entities, before you receive the collection case. In working ATAT cases, you will frequently conduct nominee or transferee investigations. That is why it is important to follow up on the assets identified in the administrative files.

Form 906 Occasionally, the taxpayer agrees with the revenue agent's findings regarding an abusive scheme and signs a Form 906, *Closing Agreement*. A Form 906 may be negotiated between the taxpayer, Appeals and Area Counsel. It usually details the abusive scheme and states the nominee, alter ego or transferee aspects of the investigation.

If the case is closed as agreed and whipsaw assessments are not made against potential nominee entities, the Form 906 is evidence in a nominee recommendation. The Form 906 is generally in the Examination administrative file.

Continued on next page

Revenue Officer Responsibility, Continued

Identification of Assets Emphasize it is not unusual for the taxpayer to transfer the assets identified by Examination in the administrative file. Point out the administrative file can be useful in establishing a pattern that will assist in a nominee or transferee recommendation.

Form 906 Briefly discuss the use of Form 906, *Closing Agreement*.

Continued on next page

Revenue Officer Responsibility, Continued

Follow the Money

“Follow the money” means to trace the flow of specific funds. ATAT cases usually involve the transfer of income or assets from one source to another, and many times through multiple sources. The intent is to make it appear that the funds or assets do not belong to the taxpayer.

Start with the latest bank records in Examination’s administrative file and trace the taxpayer’s bank accounts to the present time. This may require summoning and tracing funds from closed bank accounts to new accounts. Frequently, the funds pass through third parties.

Trace assets, including real and personal property, from the latest point in the administrative file to the present time. This may also require summoning third-party records to establish a nominee situation.

Identify Expense

Another method to “follow the money” is to identify a current expense or income source of the taxpayer and follow the flow of funds to the current bank account being used by the taxpayer. This will also require summonses. It may involve accounts not held in the taxpayer’s name.

ChexSystems

One way to follow the money is by summoning the records of ChexSystems, Inc. ChexSystems is a company that acts as a private reporting agency for banks. ChexSystems can be a great tool when looking for new bank accounts that a taxpayer recently opened. When a consumer tries to open up a bank account within the United States, their name and social security number (SSN) is usually run through ChexSystems. The most useful document we can get from ChexSystems is a consumer report. We can obtain one by issuing a summons to ChexSystems who will generate and mail the report to the person summoning the information. A sample summons is attached as Exhibit #1.

When reviewing the ChexSystems report, the two most useful sections are “Reported Information,” which is a list of banks that reported the taxpayer for inappropriate actions (such as bouncing checks). Once reported, most banks will not open up checking accounts for the reported individual. One of the most important sections is “Inquiries Instituted by Consumer Action.” This section lists the banks in which a taxpayer tried to open an account. This section may produce new levy sources. More information on ChexSystems can be found on their webpage, <https://www.consumerdebit.com/consumerinfo/us/en/index.htm>.

Continued on next page

Revenue Officer Responsibility, Continued

Follow the Money

Explain the concept of “following the money.” Point out the Examination administrative file is a starting point.

Identify Expense

Explain another way to follow a money trail is to trace an expense or income source back to a current bank account.

ChexSystems

Point out ChexSystems generally has consumer information only and not corporate information. When looking for corporate accounts, one must summons using the individual officer(s) information.

Emphasize this is a third-party summons and if issued for any other purpose than to aid in collection, it requires third-party notice procedures be followed.

Emphasize ChexSystems retains inquiries only for a limited time, so it is best to summons early for these records.

Continued on next page

Revenue Officer Responsibility, Continued

Offshore Accounts

Many persons who use abusive schemes also establish offshore accounts. With debit cards, offshore credit card accounts and internet banking, this trend is growing. Promoters of abusive schemes advocate offshore accounts and some establish them as one of their products.

In general, persons with offshore accounts totaling \$10,000 or more are required to file Form TD F 90-22.1, *Report of Foreign Bank and Financial Accounts (FBAR)*, annually with the United States Department of Treasury on or before June 30th. Failure to do so can result in civil and criminal penalties. You can check a taxpayer's compliance with this requirement by obtaining a Foreign Bank and Financial Accounts Report (FBAR) from the Currency and Banking Retrieval System (CBRS). Noncompliance should be referred to Examination.

More information can be found under "Offshore Compliance" at the abusive shelter website (<http://abusiveshelter.web.irs.gov>).

Collecting from Offshore Accounts

Administrative collection is usually impossible with offshore accounts. Exceptions include when funds are on deposit in

- countries with which the U.S. has a collection tax treaty,
- an offshore account of a U.S. bank, or
- an offshore financial institution with a branch in the U.S. or a U.S. territory.

All other situations require legal remedies.

On occasion a Federal court judge may order the money repatriated by the taxpayer. This legal remedy may result in fines or imprisonment for contempt for failure to comply.

Continued on next page

Revenue Officer Responsibility, Continued

**Offshore
Accounts**

Emphasize that offshore accounts are commonly used in ATAT schemes.

**Collecting from
Offshore
Accounts**

Discuss the collection possibilities with offshore accounts. Stress that legal remedies are often required.

Continued on next page

Revenue Officer Responsibility, Continued

Summons Following the money often leads to accounts not held in the taxpayer's name, or to sources where the taxpayer appears to have no connection. You will need to summons documents pertaining to these transactions.

To summons documents that on the surface do not appear to pertain to the taxpayer, you must first consider if a nexus exists. A nexus is a connection or link between at least two actions or issues.

Establish the Nexus If the records held by a third party are in a name other than the taxpayer's, must first establish and document a nexus. Otherwise, there is a presumption you do not have a right to the records. You establish the nexus by the facts uncovered in the investigation. To establish the nexus consider all potential sources for information. When you go to a source, such as a financial institution, structure the summons to obtain records from accounts in nominee names.

Nexus Example 1 You are assigned a case involving Daryl Mercer. During an interview with Mr. Mercer, you learn he transferred his residence to his spouse, Kathy Mercer, for no consideration. Mrs. Mercer is unemployed. However, she pays all household expenses from her bank account. You have established sufficient nexus to summons Mrs. Mercer's bank records.

Nexus Example 2 You are assigned a case involving Michael Rusk, an officer of HRH Inc. That fact alone does not give you the right to summons the bank account records of HRH Inc. However, Mr. Rusk is not cooperative.

Courthouse research shows the deed for Mr. Rusk's residence is in his name, but property tax records show the billing and payment in the name of HRH Inc. At this point, you established a sufficient nexus to the HRH Inc. bank account to summons the records.

The payment shows the possibility the account is in a nominee name and may serve as a source of collection.

Continued on next page

Revenue Officer Responsibility, Continued

Summons Emphasize summonses need to be used in most ATAT case.



Show slide #4-32 and define nexus.

Establish the Nexus Emphasize the need to establish a nexus to summons documents.

Nexus Example 1 Review the example. Discuss how the nexus was established before serving the summons.

Nexus Example 2 Review the example. Discuss how the nexus was established before serving a summons.

Continued on next page

Revenue Officer Responsibility, Continued

Nexus Example 3

You are assigned a Bal Due of \$200,000 for 2003 on Donna Benton. A county check shows Ms. Benton lives in a house purchased on March 25, 2002. The house was purchased directly in the name of the Glynn Trust. Ms. Benton did not sign any of the documents on record at the county recorder related to the purchase.

You notice that on March 23, 2002 Ms. Benton sold a home that was in her name. You serve a summons for the escrow/title records from that sale. The records show the funds from the sale were wired and used to purchase the property now owned by Glynn Trust. This establishes the nexus needed to summons the escrow records for the property purchased by Glynn Trust.

Since a nexus is established between Ms. Benton and Glynn Trust, you can summons third-party records that may be in the name of the purchaser. These records may include

- property tax payments,
- insurance payments and policies, and
- utility payments.

The summoned information may lead to additional nominees or third parties currently responsible for the utility payments and property tax payments. Since a nexus was established, you can summons information and bank records on the third parties or potential nominees/transferees.

The goal is to follow the money to prove Donna Benton is the true owner of the property held in the name of Glynn Trust.

Continued on next page

Revenue Officer Responsibility, Continued

Nexus Example 3

Review the example. Point out an initial summons may lead to other third-party summonses.



Ask the participants:

Why did the nexus between Donna Benton and Glynn Trust need to be established?

Answer:

Living in the property is not sufficient by itself since Donna Benton could be renting from a valid trust.

Point out that if the documents recording the sale to Glynn Trust were signed by Donna Benton as trustee, that might be a nexus enough to summons the escrow file.



Ask the participants:

Are there other investigative steps that could be used to establish the nexus?

Possible Answers:

- *Interviewing the party that sold the property to the Glynn Trust to determine if Donna Benton was involved in the purchase of the property.*
- *From the seller or multiple listings, identify the real estate agent involved in the sale. Interview the agent to determine if Donna Benton was involved in the purchasing of the property.*
- *Request Form 1041 for the trust to determine if Donna Benton is the fiduciary.*

Continued on next page

Revenue Officer Responsibility, Continued

Prepare for Enforcement

You should prepare for enforcement as needed. This may include using jeopardy levy procedures. In situations where assets are held by nominees, or transferees, you will proceed with a nominee or transferee investigation. The revenue agent's administrative file can provide you with information needed to prove the nominee relationship. This information can be used to initiate nominee lien and levy requests to Counsel before the assessment is made.

Revenue Officer Responsibility, Continued

**Prepare for
Enforcement**

Stress many ATAT cases involve nominee investigations. Explain records obtained by the revenue agent can be beneficial in the nominee investigation.

Frivolous Schemes

Prominent Schemes

There are a great number of abusive schemes. Many frivolous schemes are simply variations of the more prominent schemes.

Some prominent schemes are:

- IRC section 302/318 basis shifting
- Anderson Ark (AAA)
- Abusive trusts (Aegis)
- IRC section 44 ADA credit
- Conveyed assets (CARDS)
- Charitable trusts
- Corporation soles (CS)
- Home-based business
- Offshore employee leasing
- Slavery reparation
- IRC section 861
- Son of Boss
- Intermediary transaction

Definitions of these schemes can be accessed on the abusive shelter website at <http://abusiveshelter/web.irs.gov>.

Abusive Trusts

A number of promoters sell a variety of abusive trust schemes. There are two primary variations of abusive trust schemes

- Multiple trusts to reduce taxable income to zero
 - Questionable trusts
-

Multiple Trusts

To reduce taxable income to zero, taxpayers at times illegally use

- deductions for personal expenses paid by the trust,
- depreciation deductions for a personal residence,
- high fees for trust packages, and
- other questionable deductions.

Promoters market the use of multiple trusts and other entities and charge a fee for the trust package and trust return preparation. The trusts may be domestic or foreign, or a combination. The idea is any remaining taxable income after the claimed deductions would flow to the taxpayer's minor children or to a foreign trust.

Continued on next page

Frivolous Schemes

Prominent Schemes



Show slides #4-33 through #4-35. Briefly review the list of prominent schemes.

Abusive Trust



Show slide #4-36 and explain there are two primary variations of abusive trust schemes.

Multiple Trusts Briefly explain how the multiple trust schemes work.

Continued on next page

Frivolous Schemes, Continued

Questionable Trusts

Another abusive trust scheme involves the use of questionable trusts. Sometimes questionable trusts are referred to as

- pure trust,
- constitutional trust,
- sovereign trust,
- unincorporated or unorganized business organization (UBO), or
- common law trust.

The taxpayer purchases the promoter's pure trust and places their business in it. According to the scheme, the taxpayer is no longer required to report income earned by the business on any Federal tax return. The taxpayer becomes the manager of the trust. The promoter also claims assets placed into a pure trust are no longer assets of the taxpayer, despite the taxpayer having control as manager of the trust.

Charitable Trusts

The term "charitable trust" is a generic name for any trust used for charitable purposes. The rules regarding charitable entities are very complex and easily manipulated for the benefit of the taxpayer and promoter. In an abusive scheme, the promoter claims the trust as a charitable trust when in fact the trust benefits the taxpayer.

Most promoters know charitable entities are less likely to be audited and the audits are generally more restrictive. Abusive trusts classified as charitable trusts sell because the promoters can

- feign charitable intent, and
- make taxpayers feel good about giving to needy causes while benefiting and enriching themselves.

Promoters and taxpayers using exempt or non-profit organizations as part of their scheme may be assessed penalties for refusing to file returns for tax-exempt or non-profit organizations. These penalties can be substantial.

Continued on next page

Frivolous Schemes, Continued

**Questionable
Trusts**

Briefly explain how the questionable trust scheme works.

**Charitable
Trusts**

Explain the “charitable” trust as designed by the promoter is for the benefit of the taxpayer.

Point out promoters know charitable entities are less likely to be audited.

Briefly explain why charitable trusts are a popular choice for abusive trust promoters.

Continued on next page

Frivolous Schemes, Continued

Home-Based Business Scheme

In a home-based business scheme, the promoter claims that personal expenses are deductible as business expenses. If the taxpayer does not already have a business, a Schedule C “home business” is set up. The purpose is to sell tax relief promotions to others, much like a multi-level marketing scheme. The taxpayer pays a monthly fee to the promoter. In turn, the taxpayer becomes a promoter by recruiting new clients.

Since the home is used for business operations, personal expenses are deducted such as

- groceries,
 - commuting expenses,
 - children’s education expenses,
 - salaries,
 - pet care,
 - utilities,
 - clothing, and
 - entertainment.
-

Offshore Employee Leasing

In general, this arrangement involves a series of steps involving domestic and foreign parties.

- First, the taxpayer, an individual, purports to terminate an existing employment relationship with a domestic corporation that may be owned, either directly or indirectly, in whole or in part by taxpayer. This domestic corporation is the service recipient corporation.
 - The taxpayer then purports to enter into an employment relationship with a foreign corporation that is incorporated and managed in a country with which the U.S. has an income tax convention. This foreign corporation is the foreign leasing corporation.
 - The foreign leasing corporation purports to lease the right to taxpayer’s services in the U.S. to a domestic corporation. This domestic corporation is the domestic leasing corporation.
 - The domestic leasing corporation, in turn, purports to lease the taxpayer’s services to the service recipient corporation.
 - Before entering into the arrangement, the taxpayer has little or no business relationship with either the foreign leasing corporation, or with the domestic leasing corporation.
-

Continued on next page

Frivolous Schemes, Continued

Home-Based Business Scheme

Briefly explain the home-based business scheme.

Offshore Employee Leasing



Show slides #4-37 through #4-40. Review the steps in offshore employee leasing.

Emphasize the taxpayer did not have a relationship with either leasing corporation before entering into this scheme.

Continued on next page

Frivolous Schemes, Continued

Offshore Employee Leasing (continued)

- After entering into the arrangement, the taxpayer continues to provide substantially the same services for the service recipient corporation the taxpayer provided before entering into the arrangement. Thus, the interposition of foreign leasing corporation and domestic leasing corporation has no significant effect on the taxpayer's performance of services for the service recipient corporation.
 - The service recipient corporation makes payments to the domestic leasing corporation for the taxpayer's services.
 - The domestic leasing corporation makes payments to the taxpayer for services in an amount substantially less than the amount paid to the domestic leasing corporation by the service recipient corporation.
 - After deducting a fee for its participation in the arrangement, the domestic leasing corporation remits to the foreign leasing corporation, in return for taxpayer's services, the remainder of the amount paid to the domestic leasing corporation by the service recipient corporation.
-

IRC Section 861

Employers indicate they are legally not required to withhold from employees' wages because of a misinterpretation of IRC section 861. Promoters sell this scheme indicating that wages are not taxable. Promoters indicate that "sources" of taxable income do not include companies owned by Americans. They also say IRC section 861 allegedly defines all source of income from within the U.S. Most identified promoters of this scheme are enjoined or currently under investigation by IRS. The Ogden Frivolous Filer Unit continues to receive leads on suspicious Forms 941. These are sent to the field to be researched and worked.

Not a Citizen or In a Federal Enclave

A variation of the IRC section 861 argument is

- a revocation of U.S. citizenship for that of a state, territory or as a "free" person.
 - that only persons within a Federal enclave, such as the District of Columbia or Federal employees are subject to taxation.
-

Continued on next page

Frivolous Schemes, Continued

IRC Section 861	Explain the IRC section 861 scheme is used to claim that an employer is not required to withhold tax from their employees' pay. Point out it is based on a misinterpretation of the IRC.
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Not a Citizen or In a Federal Enclave	Explain a claim of not being subject to taxation is one of the most common schemes.
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Continued on next page

Frivolous Schemes, Continued

Son of Boss

Son of Boss is a highly sophisticated, technically complex scheme designed to generate tax losses without corresponding economic risks. The scheme was promoted to entrepreneurs and companies seeking to shelter large gains from the sale of a business or capital asset, and sometimes was used with executive stock options. The deal uses various financial products, such as currency options and government securities, in transactions totally extraneous to the investor's business or the asset sale creating the sheltered gain.

Intermediary Transaction

An intermediary transaction is a method of avoiding corporate level taxes in the disposal of a corporation and its assets. In a typical intermediary transaction, either the shareholder of the target corporation or a buyer interested in acquiring the corporate assets arranges for a third party to acquire the stock and then sell the assets out of the acquired corporation. These transactions are structured to conceal income and create additional entities to absorb the tax liability. The created entities are insolvent by the end of the transaction. The only method to collect the tax is through transferee assessment.

Example

Former shareholders of Racine Corporation used an intermediary transaction tax shelter to avoid paying the tax on a \$5 million gain from a sale of appreciated marketable securities. The securities were worth \$6 million.

The former shareholders received 90 percent of the sale proceeds. The promoters kept 10 percent. The inflated basis property was transferred to Racine and sold to shelter the gain. No tax was paid.

Racine did not respond to any Examination correspondence. A statutory notice was issued in October 2005. Racine did not file a petition, so the tax was assessed. Racine is defunct and has no assets. The only method for collecting the tax is through a transferee assessment against the former shareholders.

Additional information on intermediary transactions can be found at <http://lmsb.irs.gov/hq/pftg/intermediary/index.asp>

Continued on next page

Frivolous Schemes, Continued

Son of Boss Point out Son of Boss cases are generated from Large and Mid-Size Business (LMSB).

Intermediary Transaction Explain intermediary transactions require a third party who may become the subject of a promoter referral. Point out LMSB has a unit similar to the LCD. It is the office of Tax Shelter Analysis (OTSA).

Review the example. Stress a transferee assessment is the only way to collect the tax.

Continued on next page

Frivolous Schemes, Continued

Compliance Initiatives

Compliance initiatives are an effective tool used by Examination to combat frivolous schemes. Once a scheme and its participants are identified, Examination issues a letter to the participants of the scheme. The letter states they were identified as a participant and offers an opportunity to voluntarily contact the Service and file amended returns showing the correct amount of tax due.

Participants who do not come forward are audited by Examination. Taxpayers seeking to participate in a compliance initiative must make satisfactory arrangements with the Service to pay the tax due. Revenue officers are contacted and work with the taxpayer on resolving the liability. Once a satisfactory arrangement is made, Examination executes a Form 906, an assessment is made, and the Examination case is closed.

Son of Boss (SOB) was the first compliance initiative of this nature. The Global Settlement Initiative (GSI) is the second and includes 21 schemes.

Frivolous Schemes, Continued

Compliance Initiatives



Show slide #4-41 and stress the positive impact and cooperative effort between Examination and Collection.

ATAT Group Activity

Background

Revenue Officer Custer receives Bal Dues on Adrian and Dale Larimer for 2003 and 2004 totaling \$1,200,000. Both are prepared as substitutes for return (SFR) by Examination. Mr. Larimer is a self-employed geologist in the oil business and works internationally. No final demand was sent. You mail a separate Letter 1058 to each.

In response to the Letter 1058, you receive a letter stating that Mr. Larimer is not a person whose income is taxable under IRC section 861. Mrs. Larimer mails you a copy of a Vow of Poverty with the Ellis Church of Holy Salvation.

A check of local property records shows that Adrian and Dale Larimer transferred 4.3 acres and their residence to the Fallon Lane Land Trust on February 3, 2001. There is a mortgage with Howard National Bank recorded in the Larimers' name on August 13, 1981. There is no release of the mortgage recorded.

You request a copy of the revenue agent's administrative file. You find there is a whipsaw assessment against the Fallon Lane Land Trust for approximately the same amounts as the Forms 1040. You mail a Letter 1058 on the land trust since one was not previously sent. The Larimers respond with a letter stating the trust is a grantor trust and not subject to taxation.

A review of credit bureau information shows a current mortgage held by Howard National Bank in the amount of \$312,000. No new information was found on Accurant.

Internet research on the Ellis Church of Holy Salvation shows it is a scheme promising to untax all true believers. It was established by Bishop John Salem with an address in Utah.

Question 1

Based on the facts given, what is your resolution plan?

Answer:

Continued on next page

ATAT Group Activity

Instructions



Direct the participants to work in small groups for 15 minutes to complete the activity. Participants should be prepared to cite where they found the answers to the questions and to justify their responses.

Answers

Reconvene the class and review the answers as a large group. Ask each group to volunteer answers and discuss why they answered as they did. This activity should take not longer than 15 minutes.

Question 1 Answer

Based on the facts given, what is your resolution plan?

Suggested Answer:

- Based on the response to the Letter 1058, file a NFTL against the Larimers.
 - Based on records research and the whipsaw assessment, file a NFTL against the Fallon Lane Land Trust after checking IDRS. Request assignment of the trust accounts.
 - Refer the Ellis Church of Holy Salvation to the Lead Development Center.
 - Summons Howard National Bank for copies of the application, loan committee reports and any canceled checks that evidence payment and the mortgage balance.
 - Request IRP information from IDRS for purposes of levy.
 - Request the trust return to see assets and who is the fiduciary officer.
-

Continued on next page

ATAT Group Activity, Continued

Question 1
(continued)

Answer (continued):

**Additional
Information**

Courthouse records reveal the address of Howard National Bank. You summons that company for records, including canceled checks retained to evidence proof of payments. The summonsed information includes three canceled checks among the payments styled as The Ellis Church of Salvation.

The property is valued at \$650,000 and there is \$125,000 owed.

Question 2

What are your next actions?

Answer:

Continued on next page

ATAT Group Activity, Continued

Question 2
Answer

What are your next actions?

Answer: Summons the bank records on the Larimer's account that is styled as the Ellis Church of Holy Salvation.

Begin preparation of either a suit to foreclose on the Federal tax lien or seizure of the real property.

Continued on next page

ATAT Group Activity, Continued

**Additional
Information**

You summons the bank records of The Ellis Church of Holy Salvation. The signature card shows both Mr. and Mrs. Larimer are authorized to sign on the account. A review of the canceled checks and bank statements show that in 2006, the Larimers wired a total of \$500,000 to a bank in Belize.

Question 3

What is your updated working resolution?

Answer:

ATAT Group Activity, Continued

Question 3
Answer

What is your updated working resolution?

Answer:

- Contact Area Counsel regarding the need for a nominee lien and levy. Based on the bank records showing the wire transfers to Belize, check on the feasibility of a repatriation suit to order the Larimers to return the money to a U.S. bank or to place it on deposit with the Court.
 - Since Mr. Larimer works internationally and the amount of money presently in an overseas account, consider a writ of *ne exeat republica* to place the Larimers' passports in the custody of the court and prevent them from leaving the country.
 - Access a CBRS report and check FBAR compliance.
 - Researching the bank in Belize to determine if it has a domestic branch where a levy could be served. See IRM 5.21.3.
-

Exhibit 1, Summons



Summons

In the matter of HENRY ADELPHI, 1741 PACE DRIVE, PATTERSON, LA 70086
Internal Revenue Service (Division): TRAINING DATA AREA 1
Industry/Area (name or number): TRAINING DATA AREA 1 (25)
Periods: Form 941 for the quarterly periods ending December 31, 2001 and December 31, 2002

The Commissioner of Internal Revenue

To: CUSTODIAN OF RECORDS, CHEXSYSTEMS
At: 7805 HUDSON RD, SUITE 100, WOODBURY, MN 55125

You are hereby summoned and required to appear before ROBERT WILEY, an officer of the Internal Revenue Service, to give testimony and to bring with you and to produce for examination the following books, records, papers, and other data relating to the tax liability or the collection of the tax liability or for the purpose of inquiring into any offense connected with the administration or enforcement of the internal revenue laws concerning the person identified above for the periods shown.

Please provide reports, documents and information for Henry Adelphi (000-80-0725), including but not limited to ChexSystems consumer reports and any joint and individual accounts for the time period from January 1, 2008 to the present.

Do not write in this space

Business address and telephone number of IRS officer before whom you are to appear:

PO BOX 1, 600 S. MAESTRI ST., NEW ORLEANS LA 70030 (999) 555-3177

Place and time for appearance at PO BOX 1, 600 S. MAESTRI ST., NEW ORLEANS, LA 70030



IRS

Department of the Treasury
Internal Revenue Service

www.irs.gov

Form 2039(Rev. 12-2008)
Catalog Number 21405J

on the 28th day of August, 2009 at 2:00 o'clock p. m.

Issued under authority of the Internal Revenue Code this 9th day of July, 2009

ROBERT WILEY
Signature of Issuing Officer

REVENUE OFFICER
Title

Signature of Approving Officer (if applicable)

Group Manager
Title

Original -- to be kept by IRS

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