

Selected Provisions of the Internal Revenue Manual (IRM)

2017 New England IRS Representation Conference

November 17, 2017

I. 4.10.2.10 (08-01-2007) – Requesting Information: Overview

1. It is vital to the audit process that records reviewed are timely requested and received. Examiners should ensure records requested are for information necessary to perform the examination.

II. 4.10.2.10.1 (01-17-2012) – Determine the Type of Books and Records Available

1. When the initial contact is made by telephone, examiners will ask taxpayers what type of records are maintained so that Form 4564 can be prepared.
2. Examiners will ask the taxpayer about any computer records so that a determination as to whether or not the services of a computer audit specialist are needed. If a computer audit specialist is needed or required, the request should be made at this time so that the specialist can attend the initial interview. Visit <https://srs.web.irs.gov/help/MandatoryInfo.aspx> for mandatory referral criteria.

III. 4.10.2.10.2 (01-17-2012) – Requesting Information or Documents from the Taxpayer

1. On office examination cases, the examiners will prepare the Form 4564 to mail to the taxpayer with the initial contact letter. On field examination cases the Form 4564 will generally be sent with the appointment confirmation letter. See *IRM 4.10.2.8.1.1* and *IRM 4.10.2.8.1.2*.
 - A. The Form 4564 and /or issues may be discussed with the taxpayer during the initial telephone call.
 - B. During the discussion, the examiner will explain to the taxpayer that the examination will be facilitated by having the information and documentation organized before the initial interview.
2. Form 4564 will be used to document all requested information and documents needed to support items being examined. The Form 4564 will list the specific records, information, and documents the taxpayer should have available at the initial interview. Examiners should always carefully consider what data is necessary. Requests should be specific and should avoid requesting more information than is essential to resolve the issues identified.
3. Facts in each case will determine what is considered an adequate description of the requested data. A Form 4564 must sufficiently specify the books, papers, records, or

other data. The request should also include the particular activity and time period. For example:

- A. Books, papers, records and other data of the XYZ Manufacturing Company pertaining to the depreciation expense on keypunch presses purchased in 2011, as claimed on its federal income tax returns for the taxable years ending March 31, 2012 and 2013.
 - B. Bank records, including cancelled checks and bank statements, relative to income and expenses, as reported by the XYZ Corporation on its federal income tax return for the taxable years ending February 15, 2012 and 2013. Include the records for the month prior to this period and the month following this period.
4. It is advisable to include a statement on the Form 4564 indicating that the examiner will probably request additional records as the examination progresses.
 5. Examiners may have access to pro-forma type IDRs that include a list of items which are commonly requested in examinations. Use of these pro-forma IDRs is acceptable; however, the examiner must be careful not to use a "shot-gun" approach and request everything on the list if some of it may not be relevant to the return under examination. The pro-forma Form 4564 must be modified to the particular return being examined.
 6. The examiner may use either the manually prepared three-part snap-out assembly or a computer generated IDR.
 - A. If the three-part snap-out assembly version is used, Parts I and II will be issued to the taxpayer or representative; Part III will be retained by the examiner in the case file.
 - B. If a computer generated version is used, two copies will be issued to the taxpayer or representative and a copy retained by the examiner in the case file.
 7. The Form 4564 must always include a date for submission of the requested information or documents.
 8. If it is necessary to make a second request for the same information or documents, the date(s) of previous request(s) will be entered in the appropriate space.

IV. 4.10.2.10.3 (01-17-2012) – Authority to Request Books, Records, and Accountant’s Workpapers

1. IRC 7602, and 26 CFR 301.7602-1(a) provide an examiner the authority to request and receive books, records, etc., necessary to properly examine an entity’s tax return.

2. When a taxpayer indicates a reluctance to provide the necessary records, the examiner must be insistent, yet courteous, in requesting the records. The following suggestions can be adopted in handling this situation.
 - A. Apprise the taxpayer of the appropriate requirements to produce books and records. To deny access to the records will only prolong the examination or investigation since third party inquiries will, by necessity, be initiated.
 - B. Do not ever attempt to mislead or misrepresent the scope of the examination or investigation in an effort to secure records.
 - C. Do not assert your authority in a manner that could be interpreted as a threat.
 - D. Do not summons the records unless the action is first approved by the group manager. If the examiner is advised that the taxpayer is the subject of a criminal investigation, typically indicated by a 914 freeze code, the special agent assigned to the case should be contacted prior to issuing any summons.
3. Accountant's workpapers used in the audit of tax records or in preparation of a tax return are not the property of the taxpayer and are not privileged information. Therefore, the workpapers can be summoned.
4. In general, there are three types of workpapers:
 - Audit
 - Tax accrual
 - Tax reconciliation

See IRM 4.10.20.2, *Audit Workpapers, Tax Accrual Workpapers, and Tax Reconciliation Workpapers Defined*, for a definition of these terms.

5. The Service has different policies for seeking access to each of the three types of documents listed above. The different policies are set forth in IRM 4.10.20.3, *Service Policy for Requesting Workpapers*. Examiners should familiarize themselves with this section.
6. If it is necessary to issue a summons to secure workpapers, IRC 7603 provides that the records should be described with reasonable certainty. This requirement can be satisfied if the description of the records is specific and unambiguous and the summoned party can reasonably identify the exact records sought.
7. The fact that the accounting firm whose workpapers are needed did not prepare the tax return in no way diminishes the authority by IRC 7602.

V. 4.46.4.5 (03-09-2016) – Information Document Request Process

1. The Information Document Request (IDR) Process will be used for all LB&I examinations. The IDR Process gives the examination team a structured process to use when gathering information during an examination. The process is intended to encourage collaboration between the taxpayer and IRS personnel to agree on and provide information needed to support an examination.
2. Both general procedures and enforcement procedures are part of the IDR Process found in *Exhibit 4.46.4-1* and *Exhibit 4.46.4-2*.

VI. 4.46.4.5.1 (03-09-2016) – General IDR Procedures

1. Form 4564, *Information Document Request (IDR)*, or a computer facsimile thereof, should be used to request information from the taxpayer. Three copies of the form should be prepared and distributed as follows:
 - A. The original will be given to the taxpayer.
 - B. The second copy of the IDR will be filed in the IDR Log (if a paper log is maintained). The team coordinator is responsible for maintaining the IDR Log. Appropriate information should be listed in the log as IDRs are issued. The case manager is responsible for ensuring that the IDR Log is properly, accurately and timely completed. IMS can also be used for this purpose.
 - C. The third copy will be maintained by the issuing examiner. IMS can also be used for this purpose.
2. IDRs are an important part of the information gathering process during any examination. When issuing IDRs, LB&I examiners should follow the requirements for issuing IDRs that are found in *Exhibit 4.46.4-1*.
3. If a taxpayer indicates that any requested information will not be provided without a summons the IRS should move directly to the issuance of a summons.

VII. 4.46.4.5.2 (03-09-2016) – IDR Enforcement Process

1. IDRs must be in compliance with *IRM 4.46.4.5.1* before the Service can issue a summons based on the IDR and later seek summons enforcement, if necessary. The process from IDR to summons issuance has three graduated steps:
 - A. a Delinquency Notice
 - B. a Pre-Summons Letter
 - C. a Summons

This process is mandatory and has no exceptions. It requires LB&I managers at all levels to be actively involved early in the process and ensures that Counsel is prepared to support IDRs through the issuance of a summons when necessary. If, during the discussion of an IDR, a taxpayer indicates that the requested information will not be provided without a summons, the IDR enforcement procedures do not apply and the IRS should move directly to the issuance of a summons.

2. The timing of the application of the enforcement process is set forth in *Exhibit 4.46.4-2*.

VIII. 4.23.4.5.3 (03-24-2017) – Mandatory Requirements for Information Document Requests (IDRs)

1. To ensure consistency, all examiners will prepare and complete Information Document Requests (IDRs) within IMS, including annotating the Form 4564, *Information Document Request*, as appropriate (e.g., Date IDR Issued, Date Information due by). All Examiners will update the IDR form status and date fields via IDR Edit Status screen. The IDR form status choices will vary depending on the current status of the IDR (e.g., Issued, Received, Revoked, Closed, etc.).

Note:

Updating an IDR status as "Received" will not stop the days outstanding from running. After reviewing an IDR response for completeness, the IDR status should be updated to "Closed" to prevent erroneous outstanding IDRs appearing in IDR statistics and managerial reports.