



DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

SMALL BUSINESS / SELF-EMPLOYED DIVISION

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MEMORANDUM FOR DIRECTORS, COLLECTION AREA OPERATIONS  
DIRECTOR, ADVISORY AND INSOLVENCY  
CHIEF, APPEALS

FROM: Scott D. Reisher /s/ **Scott D. Reisher**  
Director, Collection Policy

SUBJECT: Interim Guidance for Documenting Trust Fund  
Recovery Penalty Recommendations

This memorandum provides interim guidance concerning Internal Revenue Code (IRC) § 6672 documentation requirements related to Trust Fund Recovery Penalty (TFRP) assertion recommendations. Please ensure that this information is distributed to all affected employees within your organization. This guidance is effective immediately.

Under IRC § 6672, the TFRP may be recommended for assertion against any person required to collect, account for, and pay over trust fund taxes who willfully fails to perform any of these activities. Each recommendation for assertion of a TFRP against a related responsible person (RRP) must stand on its own merits based on the facts the revenue officer discovers and documents in the case file during the TFRP investigation. IRM 5.7.4.2.4(3) notes that the revenue officer should determine on a case-by-case basis the amount of documentation required to support an assertion recommendation based upon the "responsibility" and "willfulness" factors of the RRP. In the majority of cases, the core evidence necessary to support a TFRP recommendation will be:

- Form 4180 interviews
- Articles of Incorporation
- Bank signature authority cards or electronic PINS/Passwords

- Copies of a sampling of cancelled checks demonstrating payment to other creditors in preference to the government **or**
- **If the taxpayer predominately uses electronic banking** bank statements demonstrating debit transaction payments in preference to the government.

Documentation, including bank records, will be requested from the business entity whenever possible. If the business entity does not provide the requested records by the deadline provided, a summons will be served on either the business entity, the bank, or both to secure the required documents. If any of the above core items listed above are not secured, the case history must document why the items were not secured as noted in IRM 5.7.4.2.4(3).

The Integrated Collection System (ICS) Form 6639, *Financial Records Summons*, template provides the option of summoning a bank for additional data, such as bank statements, loan applications and related records, and corporate resolutions. These additional documents should not be routinely requested if responsibility and willfulness can be supported, based upon the core documents discussed. The documents requested should relate to the tax periods associated with the TFRP investigation. In most instances, only the front of the cancelled checks will need to be secured.

Individual case factors will influence the amount of additional documentation needed to support the TFRP determination. The revenue officer must exercise judgment to determine if documentation beyond the core items listed above is needed prior to submitting the TFRP recommendation for managerial approval.

In some circumstances, TFRP case files may contain limited documentation when **all** responsible parties sign Form 2751. The basic requirement to conduct Form 4180 interviews contained in IRM 5.7.4.2(1) *TFRP Interviews and Investigations*, and IRM 5.1.10.3.2(11), *Effective Initial Contact*, is **not** waived by the securing of a signed Form 2751. Trust fund recovery penalty investigations where Forms 2751 are obtained from all responsible persons prior to managerial approval of Form 4183 and the amount to be assessed is **greater** than the amount specified in IRM Exhibit 5.7.3-1, also require at least one piece of documentary evidence which shows persons signing the Form 2751 are responsible. Unless the specific criteria in IRM Exhibit 5.7.3-1 is met, there should be sufficient documentation in the TFRP case file to support each recommendation, covering each specific period of the liability.

The examples below show varying degrees of documentation:

### **Example**

A revenue officer (RO) completes an initial analysis and determines who the probable officers are through the information reviewed in the Articles of Incorporation. The business has remained current for the last two quarters. The

RO makes a field call to the business and both officers are present. The RO secures Forms 4180 and 433-A Collection Information Statement from both officers. Both officers state they are responsible and they each sign a Form 2751. The RO in this example has the Articles of Incorporation secured during initial analysis as well as Forms 4180 and 433-A from each officer. No additional documentation is required.

### **Example**

A RO completes an initial analysis and determines who the probable officers are through the information reviewed in the Articles of Incorporation. The RO makes a field call to the business, speaks to the one officer present and secures Forms 4180 and 433-A Collection Information Statement. The RO requests bank documents from the taxpayer and establishes a deadline for the information. The RO schedules and completes a Form 4180 interview with the officer who was not present during the initial field call. When the taxpayers fail to submit the requested documents, the RO prepares Form 6639 requesting bank signature cards and a sampling of the front copy of checks for the periods of the liability. Following the expiration of the bank summons quash period, the RO reviews the bank records and determines there are no additional signature authorities on the account. Based upon review of the cancelled checks, the RO determines that payments were made by both officers to other creditors in preference to the accruing taxes.

The RO has secured the core documentation items and has sufficient documentation to support recommendation of the TFRP against both parties.

In the above example, had the business been a large or mid-size corporation, or a business with a multi-layered or complicated ownership structure, an increased degree of documentation may have been necessary. The more convoluted the corporate structure (multiple responsible parties and/or multiple periods, intricate corporate structure) the more documentation is needed to support the assertion. When a revenue officer determines additional evidence **beyond** the core items are required to support an assertion, IRM 5.7.4 provides suggested additional records that may be secured and reviewed.

IRM 5.7.6.1.7.8(1)(f) *Revenue Officer Disagrees With Protest*, states that managerial review of protested TFRP files must be completed prior to forwarding the case file to Control Point Monitoring for transmission to Appeals. Managers must verify that the assessment is fully supported and the case file contains all necessary documents, and document this review action in ICS. If the case file contains insufficient documentation to support the assertion, the case file will be returned to the revenue officer for additional investigative actions as necessary.

This guidance will be incorporated into IRM 5.7.4 and IRM 5.7.6 not more than one year from the date of this memorandum.

If you have any questions, please feel free to contact me, or a member of your staff may contact Jeanne Dunford, Senior Program Analyst. Field personnel should direct any questions, through their management staff, to the appropriate Area contact.

cc: [www.irs.gov](http://www.irs.gov)