



- 5.6.1 Collateral Agreements and Security Type Collateral
 - 5.6.1.1 Program Scope and Objectives
 - 5.6.1.1.1 Background
 - 5.6.1.1.2 Authority
 - 5.6.1.1.3 Responsibilities
 - 5.6.1.1.4 Program Management and Review
 - 5.6.1.1.5 Program Control
 - 5.6.1.1.6 Terms/Definitions
 - 5.6.1.1.7 Related Resources
 - 5.6.1.2 Collateral Agreements
 - 5.6.1.3 Types of Acceptable Securities

Part 5. Collecting Process

Chapter 6. Collateral Agreements

Section 1. Collateral Agreements and Security Type Collateral

5.6.1 Collateral Agreements and Security Type Collateral

Manual Transmittal

May 19, 2023

Purpose

(1) This transmits revised IRM 5.6.1, Collateral Agreements, Collateral Agreements and Security Type Collateral.

Material Changes

(1) The following is a description of the material changes in this IRM:

IRM Section	Description of Change
IRM 5.6.1.2	Moved the collection action procedures to a common location at 5.6.1.5
IRM 5.6.1.3	Linked the types of securities with the applicable IRM section and put in the same order as the IRM.
IRM 5.6.1.3.2	Clarified Fuel Tax Bonds.
IRM 5.6.1.5	Updated Initial Collection Actions.
IRM 5.6.1.8	Updated designations and clarified adequate security.
IRM 5.6.1.9	Clarified suspension time.

Effect on Other Documents

- 5.6.1.3.1 [Bonds](#) This supersedes IRM 5.6.1 dated December 08, 2020
- 5.6.1.3.2 [Fuel Tax Bonds](#)
 - Audience**
Small Business/Self Employed Collection Employees
 - Effective Date**
(05-19-2023)
 - Rocco A. Steco
Acting Director, Collection Policy
Small Business/Self Employed Division
- 5.6.1.3.3 [Estate Tax Bonds and Other Collateral](#)
- 5.6.1.3.4 [Mortgages](#) **5.6.1.1 (12-08-2020)**
- 5.6.1.3.5 [Escrow Arrangements](#) **Program Scope and Objectives**
 - (1) **Purpose.** This Internal Revenue Manual (IRM) provides the definition of a collateral agreement and the guidance needed to process these agreements. While many topics are touched upon in this chapter, comprehensive guidance about all of them cannot be included here. As you use this chapter, remain alert for references to other resources, such as related IRM's and websites and access that guidance as needed to ensure a thorough understanding of topics.
 - (2) **Audience.** These procedures and guidance apply to IRS Field Collection employees, CEASO (Civil Enforcement Advice and Support Operations), and group managers.
 - (3) **Policy Owner.** Director, Collection Policy, Small Business/Self-Employed (SBSE)
 - (4) **Program Owner.** SB/SE Collection Policy, Case Resolution Alternatives (CRA), is the program owner of this IRM
 - (5) **Primary Stakeholders.** That this IRM impacts:
 - Field Collection
 - CEASO
 - Chief Counsel
 - (6) **Program Goal.** By following the procedures in this IRM, the employee will be able to identify the types of collateral, risks, and processes needed when placing the taxpayer into a collateral agreement.
- 5.6.1.4 [Initial Processing \(Overview\)](#)
- 5.6.1.5 [Initial Collection Actions](#)
- 5.6.1.6 [CEASO Actions](#)
- 5.6.1.7 [Collateral Agreement and Other Acquired Property Serial Numbers](#)
- 5.6.1.8 [Preparing Form 2276, Collateral](#)

5.6.1.1.1 (03-20-2018)

Deposit
Record

Background

- 5.6.1.8.1
Rejection
of

(1) A collateral agreement is a pledge, guaranteed by security, for the performance of a certain act, i.e., payment of a delinquency or the filing of a return.

- Collateral
Security

5.6.1.1.2 (12-08-2020)

- 5.6.1.8.2
Redesigned
Revenue
Accounting
and
Control
System
(RRACS)

Authority

- (1) IRC 7101, Form of bonds.
- (2) 26 CFR 301.7101-1, Form of bond and security required.

5.6.1.1.3 (12-08-2020)

Responsibilities

- 5.6.1.9 IDRS
Input
- 5.6.1.10
International
Collateral
Agreements

- (1) The Director, Collection Policy is the executive responsible for the policies and procedures to be employed by collection personnel.
- (2) Field Collection group managers, CEASO group managers, Field Collection territory managers, and CEASO territory managers are responsible for ensuring the guidance and procedures described in this IRM are complied with.
- (3) Collection employees are responsible for following the guidance provided in the IRM.

- 5.6.1.10.1
Foreign
Investment
Real
Property
Tax Act
(FIRPTA)

5.6.1.1.4 (12-08-2020)

Program Management and Review

- 5.6.1.10.1.1
Processing
of
Security
Agreements

- (1) Program Reports.
 - National Quality Review System (NQRS) Reports
 - ICS Reports
 - IRACS Report
- (2) Program Effectiveness. The program effectiveness is measured by the following review types and by level of management.
 - Case reviews are conducted by group managers and are recorded in the Embedded Quality Review System (EQRS) and national quality reviewers, and are recorded in the National Quality Review System (NQRS) to ensure compliance with this IRM.


- 5.6.1.10.2
Federal
Insurance
Excise Tax
- 5.6.1.10.2.1
CEASO

- (2) This table lists acronyms commonly used within this IRM and their definitions.

Acronym	Definition
ACQ	Acquired
CFF	Collection Field Function
CDR	Collateral Deposit Record
CEASO	Civil Enforcement Advice and Support Operations
EQRS	Embedded Quality Review System
FET	Federal Excise Tax
FIRPTA	Foreign Investment Real Property Tax Act
ICS	Integrated Collection System
IRC	Internal Revenue Code
IRM	Internal Revenue Manual
LOC	Letter of Credit
NFTL	Notice of Federal Tax Lien
NQRS	National Quality Review System
QDOTS	Qualified Domestic Trusts
RRACS	Redesigned Revenue Accounting and Control System

5.6.1.1.7 (12-08-2020)

Related Resources

- (1) Collateral agreement related resources include:
- IRM 10.5.2, Privacy Compliance and Assurance (PCA) Program
 - Treasury Department Circular No. 570 may be found at <https://fiscal.treasury.gov/surety-bonds/circular-570.html> 
 - IRM 5.5.8.5.1, Bond/Lien Determinations for Estate Tax Deferred Under IRC 6166
 - IRM 21.8.1.12.20, IRC 877A - Mark-To-Market Exit Tax, for complete guidance for expatriation and taxable consequences.
 - All IRS personnel must be familiar with and responsible for execution of duties in accordance with taxpayer rights afforded by the provisions in the Internal Revenue Code, including the Taxpayer Bill of Rights (TBOR) listed in IRC 7803(a)(3). For additional information about TBOR, see <https://www.irs.gov/taxpayer-bill-of-rights>.

5.6.1.2 (05-19-2023)

Collateral Agreements

- (1) A collateral agreement is executed by the taxpayer and "collateral security" ensures that the taxpayer performs the terms of the agreement. A collateral agreement is a pledge, guaranteed by security, for the performance of a certain act, i.e., payment of a delinquency or the filing of a return. A collateral agreement does not compromise the tax liability and should not be confused with collateral agreements in the context of offers in compromise. See IRM 5.8.6.1, Program Scope and Objectives.
- (2) Read IRC 7101 and 26 CFR 301.7101-1 for a discussion of situations that involve the use of bonds and by extension other forms of collateral security.
- (3) Consider the following when contemplating a collateral agreement:
 - a. The risks of not filing a Notice of Federal Tax Lien (NFTL) since collateral agreements do not offer the same protection to the government.
 - b. The possibility the taxpayer could file bankruptcy.
 - c. The possibility of competing lien priorities.
 - d. The possibility of state law ramifications when contemplating taking a deed of trust. Contact CEASO for guidance.
 - e. The lack of standards and concern for security and marketability for "other acceptable collateral." Contact CEASO for guidance.
 - f. For United States Saving Bonds, endorsement or execution of the bond as one of the conditions.
- (4) See *IRM 5.6.1.5*, Initial Collection Actions for procedures for the processing of collateral agreements.

5.6.1.3 (05-19-2023)


Types of Acceptable Securities

- (1) The value of the collateral must be enough to protect the interest of the Government throughout the life of the agreement. Consideration should be given to possible market fluctuations. Collateral security includes, but is not limited to, the following:
 - *IRM 5.6.1.3.1*, Bonds
 - *IRM 5.6.1.3.2*, Fuel Tax Bonds
 - *IRM 5.6.1.3.3*, Estate Tax Bonds and Other Collateral

- *IRM 5.6.1.3.4*, Mortgages
 - *IRM 5.6.1.3.5*, Escrow Arrangements
 - *IRM 5.6.1.3.6*, Letter of Credit
 - Other forms of securities acceptable to the Area Director after consultation with CEASO
- (2) Since collateral security may be negotiable while in the possession of any person, precautionary measures must be taken to safeguard the collateral. See *IRM 10.5.2*, Privacy Compliance and Assurance (PCA) Program

5.6.1.3.1 (12-08-2020)

Bonds

- (1) A bond for the purpose of securing payment of internal revenue taxes is collateral security offered by the taxpayer, their representative or a third party, which satisfies the provisions of IRC 7101 and 26 CFR 301.7101-1.
- (2) 26 CFR 301.7101-1(b)(1) and (2) specify the kinds of security acceptable for securing payment of internal revenue taxes as provided in Title 6, Section 15 of the United States Code.
- (3) Treasury Department Circular No. 570, Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds, and as Acceptable Reinsuring Companies. Periodically lists the companies certified by the Secretary of the Treasury as acceptable sureties on Federal bonds. This list also shows the areas in which the companies are licensed to transact business and the underwriting limitations applicable to each company.
- Note:** Treasury Department Circular No. 570 may be found at <https://fiscal.treasury.gov/surety-bonds/circular-570.html> .
- (4) A bond executed by a surety not holding a certificate of authority approved by the Secretary of the Treasury shall be accompanied by financial statements of the surety or sureties. The taxpayer's proposal to pay will be submitted with the bond.
- (5) A bond is considered executed with satisfactory surety if it is secured by bonds or notes of the United States as provided in Treasury Circular No. 154, CFR 31 Part 225. Collection Field function (Cff) should contact area counsel, through CEASO, if you have any questions about whether the bonds or notes constitute satisfactory surety

- (6) 26 CFR 301.7101 (b)(2) allows the area director to consider a bond as being executed with satisfactory security, in lieu of execution by an approved surety company or in lieu of being secured by bonds or notes of the United States, if it is:
- a. Executed by a corporate surety (other than a surety company), so long as the corporate surety establishes that it is within its powers to act as a surety for another; or
 - b. Executed by two or more individual sureties, if each meet the conditions of 26 CFR 301.7101-1(b)(3). These provisions indicate that each must reside in the state in which the principal place of business or legal residence of the primary obligor lies; that each have property subject to execution of a fair market value equal to at least the penalty of the bond; that all real property offered as security must be located in the state of the primary obligor's principal place of business or legal residence; the surety must agree not to mortgage or otherwise encumber any property offered as security while the bond remains in effect (absent securing the area director's permission); and they must file an annual affidavit, on a form prescribed by the Secretary, describing the adequacy of their security;
 - c. Secured by a mortgage on real estate or personal property;
 - d. Secured by a certified, cashier's or treasurer's check drawn on a bank or trust company incorporated under the laws of the United States, a state, territory or possession of the United States or by the United States postal, bank, express or telegraph money order;
 - e. Secured by corporate bonds, stocks or by State or local Governmental bonds; or
 - f. Secured by any other acceptable collateral.
- (7) Security must be submitted with a suitable bond agreement executed by the taxpayer and any third party which may be guaranteeing payment.
- (8) Bond(s) executed with surety should be submitted in a format acceptable to the area director. Consult with CEASO for acceptable formats.
- (9) Ascertain from area counsel, through CEASO, whether a time limitation for the validity of the types of checks below are provided by state laws in their respective state.

If there is a bond agreement secured by cashier's, treasurer's or certified checks and there are. . .	Then the validity of the check is . . .
state statutes relating to the period of limitations	not extended past what is provided by state law.
no state statutes relating to the period of limitations	is limited to one year from the date the check is issued.

(10) For corporate stocks and/or bonds, especially unlisted securities:

- a. Ascertain to the extent possible that market values will not fluctuate below levels sufficient to guarantee payment of the taxes.
- b. Accept such collateral only when current market values are well above the amount of the outstanding taxes being secured.
- c. Do not accept "Restricted" or "Letter" stock, which cannot be sold without a registration certificate from the Securities and Exchange Commission.

5.6.1.3.2 (05-19-2023)

Fuel Tax Bonds

- (1) A bond may be relevant in two situations related to fuel excise taxes (and excise tax credits and payments) and registration under IRC 4101 : (i) Form 637 Application for Registration (For Certain Excise Tax Activities) registration applications to be registered with the IRS for a particular fuel-related activity, and (ii) remedial actions related to a taxpayer's existing registration for a particular fuel-related activity.
 - a. In general, IRC 4101(a) provides that every person required by the Secretary to register under IRC 4101 with respect to the tax imposed by IRC 4041(a) or IRC 4081, every person producing or importing biodiesel (as defined in 40A(d)(1)), and every person producing second generation biofuel (as defined in section 40(b)(6)(E)) must be registered with the Secretary according to the regulations.

- b. A registration under IRC 4101 may be used only in accordance with the regulations prescribed under IRC 4101 . **See** IRC 4101(a) and 26 CFR 48.4101-1.
 - c. IRC 6426(a) generally provides that no credit is allowed in the case of the credits described in IRC 6426(d) (alternative fuel credit) and IRC 6426(e) (alternative fuel mixture credit) unless the taxpayer is registered under IRC 4101 .
 - d. Several notices, discussed under paragraph (2) below, require registration under IRC 4101 for certain fuel-related activities.
- (2) The first situation is when a taxpayer applies to register under IRC 4101 for a specific activity letter through the Form 637**Application for Registration (for Certain Excise Tax Activities)** application process.
- a. The IRS may consider a bond as a factor in the acceptable risk test of 26 CFR 48.4101-1(f)(3) and in the adequate security test of 26 CFR 48.4101-1(f)(4). A bond also is a potential means for an applicant to meet the adequate security test of 26 CFR 48.4101-1(f)(4), in cases where the applicant does not have both adequate financial resources and a satisfactory tax history within the meaning of 26 CFR 48.4101-1(f)(4)(ii) and (iii). Under 26 CFR 48.4101(f)(1), the acceptable risk test and the adequate security test are applied to applicants listed in 26 CFR 48.4101-1(c) and (d) other than ultimate vendors, pipeline operators and vessel operators. **See** 26 CFR 48.4101-1. Generally, this will be Activity Letters K, S, and M.
 - b. Additionally, the IRS has issued subsequent guidance that either generally requires registration or requires registration in order to make a claim. In either case the IRS will only register an applicant if the IRS is satisfied with the filing, deposit, payment, reporting, and claim history for all federal taxes of the applicant and any related person. Since this is discretionary, a bond could (but is not required to) satisfy the IRS in this regard. Specifically, Notice 2005-4, 2(f) requires registration of biodiesel and alcohol producers (activities AB, AF, and NB) and reiterates the blending registration requirements (activity M); 4(f) requires registration of commercial aviation operators and full rate buyers (activity Y). Notice 2005-80, 4(d) requires registration of credit card issuers (activity CC). Notice 2006-92, 3(b)(1)(ii) and 4(b)(1)(iii) requires

registration to make alternative fuel and alternative fuel mixture claims (activities AL and AM). See also IRC 6426 (a), which requires that claimants be registered under IRC 4101 in order to claim the IRC 6426 (d) alternative fuel credit or the IRC 6426 (e) alternative fuel mixture credit.

- (3) The second situation is when 48.4101-1(i)(2)(ii) requires remedial action for registrants who are not ultimate vendors or ultimate vendors (blocked pump) if the registrant fails its affirmative duties under 48.4101-1(h) or made a false statement pertaining to its registration that creates a significant risk of nonpayment or late payment of tax. This can be for other 4101 registrants besides K, M, S, and Y but it cannot be for UA, UB, UP, or UV.
- (4) IRM 4.24.2.11 also discusses procedures and circumstances when the agent may recommend to the area director that a bond be required as a condition of registration.
- (5) Refer to IRC 4101 (b) and 26 CFR 48.4101-1 (j) of the regulations for the form and amount of the bond.

5.6.1.3.3 (12-08-2020)

Estate Tax Bonds and Other Collateral

- (1) CEASO shall determine whether to require a bond or, in the alternative, suggest to the Executor, or other Estate representative, that a 6324A lien would be acceptable security for the deferred payment of estate tax. See IRM 5.5.6.2, IRC Section 6166.
- (2) CEASO must first determine whether any security for extension of time to pay estate taxes is necessary based on the facts and circumstances of each estate. See IRM 5.5.8.5.1, Bond/Lien Determinations for Estate Tax Deferred Under IRC 6166.
- (3) Bonds or other types of collateral accepted by CEASO from estates securing extensions of time to pay estate taxes under IRC 6161, IRC 6163, and IRC 6166 will be maintained for safekeeping by the CEASO Estate Tax Group.
- (4) Bonds and other types of collateral accepted by Estate & Gift from estates securing contingent estate tax liabilities under IRC 2056A relating to Qualified Domestic Trusts (QDOTs) will also be maintained for safekeeping by the CEASO estate tax group.
- (5) The IRS cannot accept a Letter of Credit (LOC) in lieu of a bond when a decedent's estate elects to pay the estate tax in installments under

IRC 6166.

- (6) In the case of any proposed bond, CEASO will consult with area counsel for drafting (if needed) and review of the bond agreement.
- (7) Area counsel will also be consulted when unusual assets are being considered as security on the lien agreement, such as art or collectibles, to recommend appropriate actions to secure the collateral.
- (8) Stock offered as collateral may be accepted only when the statutory requirements of IRC 6324A(b)(1) and (2) are met. The requirements are:
 - a. The stock can be expected to survive the deferral period;
 - b. The collateral must be adequately identified in the agreement and can be submitted via Form 13925, IRC Section 6324A Lien Agreement Form; See IRM 5.5.8.5, Collateral from Estates with IRC 6166 Elections; and
 - c. The value of the stock must be enough to fully satisfy the estate tax liability plus the required interest amount.

Note: The IRS cannot reject closely held stock offered as collateral for the sole reason that it is closely held and hard to value. Consult with area counsel, through CEASO, on valuation issues.
- (9) If stock certificates are pledged as collateral for the lien, the CEASO employee will secure the original stock certificates and store in an approved safe. This will prevent the sale of such certificates to third parties without regard for the 6324A lien.
- (10) The IRS will file a NFTL, Form 668-J, Notice of Federal Estate Tax Lien Under Internal Revenue Code Section 6324A, for the special estate tax lien on the stock. Stock, in most instances, will be considered personal property under state law. With respect to personal property, a lien must be filed in the office designated by state law in which the personal property is located.
- (11) Follow procedures in *IRM 5.6.1.8*, Preparing Form 2276, Collateral Deposit Record for the preparation of Form 2276, Collateral Deposit Record. The stock certificates will be shown as "Safekeeping" reflecting a "zero value" for RRACS purposes.

5.6.1.3.4 (12-08-2020)

Mortgages

- (1) When circumstances indicate a need to extend the period for collection of tax, the IRS will normally have the Department of Justice reduce the tax claim to judgment. In rare situations, to extend the time period in which the tax may be paid or to obtain a lien on a piece of property to which the federal tax lien never attached, the IRS may obtain a consensual lien (mortgage or deed of trust) from the taxpayer.
- (2) In all situations where IRS personnel contemplate obtaining a consensual lien, area counsel, through CEASO, should be contacted as soon as possible and their approval secured.
- (3) The advice and approval of area counsel for any anticipated consensual lien are vital. IRS personnel must recognize that state law determines if the consensual lien exists and if the lien will be enforceable. Failure to comply with state law may make the consensual lien invalid or unenforceable.
- (4) These considerations limit the use of the consensual lien to rare circumstances. It may be appropriate when the federal tax lien does not attach to the property in question. For example, an assessment exists against only one spouse and the federal tax lien does not attach to real property held by the non-liable spouse. To avoid collection from property that the lien encumbers, the couple may decide to give the IRS a consensual lien on property held by the non-liable spouse.
- (5) The IRS should never obtain a consensual lien in lieu of filing a notice of federal tax lien and reducing the tax claim to judgment or requiring that the taxpayer post a bond.
- (6) The facts and circumstances of a case will determine the duration of the consensual lien. Area counsel must specifically advise the IRS concerning the state law issues regarding the duration of the lien and its refiling.
- (7) The mortgage or deed of trust must be prepared by the taxpayer's counsel. The advice of private counsel negates later claims that the taxpayer did not know or understand their rights. The instrument must be executed in favor of the United States, as mortgagee, and should contain a clause expressly providing that it may be released by the area director, collection, IRS, for the geographic area in which the mortgage is recorded. Do not include the name of the official. All fees in connection with the instrument, including recording and releasing fees, must be paid directly by the mortgagor.

- (8) Whenever possible, the instrument should provide that the taxpayer makes payments over the life of the mortgage, thereby reducing interest and principal.
- (9) Revenue officers must ascertain whether there are any senior lienholders on the property being offered as collateral. Specific information obtained on any senior liens should include the current status of the lien interest and the potential for default by the taxpayer, which would then force the IRS to either redeem the property or lose its interest in the property held as collateral.
- (10) The collection group manager receiving the mortgage/deed of trust will immediately contact the collateral advisor, for their review of the instrument and all related documents. If the group manager approves of the mortgage/deed of trust, these documents will be forwarded to the CEASO group manager for review and forwarding to area counsel for approval.
- (11) If the CEASO group manager and area counsel approve the mortgage/deed of trust, the instrument will be returned to the initiating collection group managers to be filed as provided under local law.

5.6.1.3.5 (12-08-2020)

Escrow Arrangements

- (1) Explore escrow arrangements when prompt action is required to safeguard the Government's interests, to obtain cash security on which the tax lien has not attached, and/or allow the taxpayer to remain in business during the time required for:
 - Judicial review of their case,
 - Readjustment of their affairs,
 - Releasing a levy.
- (2) Make certain that the:
 - Escrow agent is a disinterested and reliable person,
 - Government's interest will always be protected,
 - Costs in connection with the securing of an escrow agent and other related expenses will be paid directly by the taxpayer.
- (3) Provide the following information to the CEASO group manager where an escrow agreement is to be executed:

- Name, identification number and address of taxpayer,
- Name and address of escrow agent,
- Taxpayer's business and location,
- Account information (type of tax, period, balance, period remaining under the collection statute, etc.),
- Condition of the arrangement,
- Terms of the agreement,
- Other pertinent information.

5.6.1.3.6 (12-08-2020)

Letter of Credit

- (1) A Letter of Credit (LOC) allows the taxpayer to remain in business and protects the Government's interest and is acceptable for:
 - Forbearance in filing Notice of Federal Tax Lien,
 - Releasing a levy,
 - Deposit on redemption.
- (2) Cases arising under IRC 6165 and IRC 6166.
 - As indicated in *IRM 5.6.1.3.3*, Estate Tax Bonds and Other Collateral, letters of credit cannot be furnished in lieu of the bond required by IRC 6166.
 - Previously, this prohibition did not extend to cases arising under IRC 6165 where the letter of credit was determined as appropriate substitute for bond.
 - IRC 7101(1) further states that whenever a bond is required, it shall be in such form with such surety as prescribed by regulation. Letters of credit do not meet the surety criteria set forth in 26 CFR 301.7101-1(b) for any case where a bond is required.
 - In cases where a letter of credit is proposed in lieu of bond, the proponent should be advised that the application is not acceptable.
 - However, in accepted cases where a letter of credit has been substituted for a bond conforming to previous IRM procedures, the acceptance **should not** be revoked provided the proponent performs in accordance with the agreement.

- (3) Consult with area counsel, through CEASO, regarding the terms, conditions and duration of the instrument.
- (4) Costs in connection with securing and issuing the instrument and other related expenses must be paid by the taxpayer.
- (5) To adequately protect the interest of the United States, the letter of credit must:
 - a. Specify the United States, by and through the area director of Internal Revenue Service, as beneficiary of the credit established under the Letter.
 - b. Be irrevocable, meaning that it cannot be revoked prior to its expiration date without the consent of the issuing institution, the taxpayer(s), and the area director.
 - c. Be "clean" , meaning that no document of title is required to be presented by the area director in order to receive payment under the Letter of Credit.
- (6) When a Letter of Credit is being considered, submit the following data to CEASO:
 - a. Name, identification number and address of taxpayer,
 - b. Name and address of proposed issuer of the Letter of Credit,
 - c. Taxpayer's business and location if different from that given in "a" above,
 - d. Account information (type of tax, period, balance, period remaining under the collection statute, etc.),
 - e. Condition of the arrangement,
 - f. Terms of the agreement,
 - g. Other pertinent information.

Note: The date stipulated for payment will not extend beyond six months prior to the expiration of the collection statute.

5.6.1.4 (12-08-2020)

Initial Processing (Overview)

- (1) The following subsections explain the procedures for the processing of collateral agreements and Form 2276, Collateral Deposit Record.

5.6.1.5 (05-19-2023)

Initial Collection Actions

- (1) When acceptance of collateral security is in the best interest of the Government, the responsible collection employee will negotiate the terms of the collateral agreement and the nature of the collateral with the taxpayer or representative.
 - a. Ensure that the taxpayer or representative completes the collateral agreement in triplicate. Electronic submissions may be accepted and should be signed digitally with a secure signature of the taxpayer and/or representative.

Note: When specific questions arise concerning preparation of the collateral agreement, obtain assistance from CEASO and area counsel.
 - b. Prepare a transmittal memorandum in triplicate furnishing pertinent facts and a recommendation as to whether the offered collateral and the terms of the collateral agreement have merit for consideration. Contact local CEASO for questions concerning the transmittal memorandum format. Electronic submissions are acceptable.
 - c. The collateral agreement and transmittal memorandum should be submitted to the collection employee's immediate supervisor for review and subsequent approval. Digital signature(s) of approving official(s) are acceptable.
 - d. The approved collateral agreement and transmittal memorandum should then be forwarded to CEASO for further review and approval.
 - e. Safeguard collateral at all times. Refer to IRM 10.2.15, Minimum Protection Standards (MPS), for specific guidance regarding safekeeping requirements.

Note: SB/SE Delegation Order 5.3 (Rev. 1) contains information regarding approval authority. Collateral agreements should always be reviewed and approved by CEASO.

Note: If Collection is contemplating a collateral agreement for non-assessed taxes, CEASO will consult with area counsel.
- (2) Requests for collateral agreements must be prepared in triplicate by the taxpayer, or the taxpayer's representative, and must include the following information:

- a. Identification of the parties (taxpayer, IRS, and/or third party, if applicable),
 - b. Aggregate tax liability,
 - c. Method by which taxpayer proposes to pay the tax liability,
 - d. Specific dates outlining when required actions will be taken.
- (3) The taxpayer or the authorized representative must be advised that failure to keep the terms of the collateral agreement will result in the IRS taking the necessary action to liquidate the collateral. A collateral agreement creates an independent remedy, separate from one to collect a tax, which may not be subject to the statute of limitations on collection.
- (4) In addition to the conditions mentioned above, the following are additional requirements for a valid collateral agreement:
- a. The taxpayer's proposal for payment supported by a properly executed power of attorney or by endorsement of the securities.
 - b. Provisions for the disposition of any coupons maturing while the security is in the possession of the Government.
 - c. A condition that the IRS intends to offset any refunds to the delinquent account covered by the agreement until accounts are paid in full or otherwise satisfied.
 - d. Provision that the taxpayer must remain current on filing and must not incur any further delinquencies during the term of the collateral agreement.
 - e. A term that the IRS has a unilateral right to liquidate the collateral upon the failure to keep the terms of the agreement.

5.6.1.6 (12-08-2020)

CEASO Actions

- (1) CEASO will aid revenue officers and other IRS personnel in developing collateral agreements and by reviewing the collateral security for accuracy, form and content.
- (2) CEASO will open a control on ICS no later than seven (7) calendar days after receipt in the group of the collateral agreement using the appropriate action code (184 - Collateral, 188 - Captive Insurance, and 189 - Other International)
- (3) If the proposed collateral agreement is acceptable, the CEASO employee will:

- a. Forward to the CEASO group manager for approval. Digital signature(s) of approving official(s) are acceptable.
 - b. Request IDRS input upon approval as described in *IRM 5.6.1.9*.
- (4) If the proposed collateral agreement is not in conformance, forward to area counsel for an opinion.

5.6.1.7 (12-08-2020)

Collateral Agreement and Other Acquired Property Serial Numbers

- (1) Revenue officers will contact CEASO for assignment of a unique serial number.
- (2) The serial number will be used on Form 2276, Collateral Deposit Record.
- (3) Serial numbers will be used to identify both collateral agreements and "other" acquired property agreements.
 - "Other acquired property" is any property deeded to, surrendered to, or otherwise acquired by the IRS by means other than IRS seizure or sale. Typically, this could involve some type of litigation or voluntary surrender of property.
- (4) This guidance is required in order to comply with the current alignment of Collection Field Area Operations, as it relates to the Interim Revenue Accounting and Control System (IRACS) reports. This will ensure that the serial numbers for collateral agreements and other acquired property are correctly entered and reconciled on the IRACS reports.
- (5) All collateral agreements and other acquired property serial numbers will be based on the alignment of the Collection Field Area Operations as follows:
 - Area 01 - North Atlantic
 - Area 02 - Central
 - Area 03 - South Atlantic
 - Area 05 - Gulf States
 - Area 06 - Western
 - Area 07 - California
 - Area 15 - International
- (6) See *IRM 5.6.1.8* for additional information regarding the serial number format.

5.6.1.8 (05-19-2023)

Preparing Form 2276, Collateral Deposit Record

- (1) Upon receipt of the collateral or other acquired property, the revenue officer or advisor will:
 - Prepare Form 2276, Collateral Deposit Record, for identification of the collateral agreement and for adequate control through IRACS.
 - Complete all applicable items on the form. Generally, items 1 through 10.
 - **Item 2 - Serial Number** - the revenue officer will contact CEASO for assignment of a unique serial number.
 - The serial number identifies the fiscal year, Collateral (CDR) or Acquired (ACQ), Collection Field Area Operations location and Office code, three-digit sequence number and an alpha number, if applicable.

Example:

Fiscal Year and "CDR" or "ACQ"	Collection Field Area Operations - Area (01 through 07, 15) AND Local Office Group Code	Three Digit Serial Sequence Number and Alpha Definer (if applicable)
10CDR	0410	001

- (2) In the example above, Fiscal Year 10; CDR; Collection Area 04, Group 10; Sequence Number 001 with no "alpha" code. Alpha codes are used to differentiate international collateral situations. Use "E" to designate Federal Excise Tax (FET) collateral, "CI" to designate Captive Insurance collateral and "X" for Expatriate Tax collateral. The alpha codes provide a control mechanism for the South Atlantic Territory to differentiate the collateral agreements listed on the RACS 135 Report. FIRPTA collateral are housed only in the Central Territory and represent a very small inventory.
- (3) Item 6(b) - include the expiration date of the collateral agreement.
- (4) Item 6(d) - determine if a value should be given in the column or if the word "safekeeping" is applicable for the type of collateral agreement secured.

If in the agreement there is. . .	Then Classify as. . .	On Form 2276 for financial reporting purposes. . .
No assessed liability, i.e., only a potential future tax liability, such as an International collateral	Safekeeping	Enter "Safekeeping" in item 6(d) and the value in item 6(e).
an Assessed liability but No unilateral right to the property, i.e., Escrow Agreements	Safekeeping	Enter "Safekeeping" in item 6(d) and the value in item 6(e).
An assessed liability And a unilateral right, i.e., cashiers' check, bearer bonds, irrevocable letter of credit, mortgages, surety bonds, etc.	Collateral	Enter the value in items 6(d) and 6(e) for area information purposes.
Seized Assets, Sales, Deposits, etc.	Collateral	"Safekeeping"
Other Acquired Property	Other Acquired Property	Value of Acquired Property or "Safekeeping"

(5) After approval CEASO will:

- a. Seal the collateral, with a copy of the agreement, in an envelope and sign the envelope across the seal.
- b. Maintain adequate security of the collateral and agreement in a security container or limited area as described in IRM 10.2.14, Methods of Providing Protection, and IRM 10.2.15, Minimum Protection Standards (MPS).
- c. Open an CEASO control module on ICS using the action code 184.

(6) In addition to the above actions, the advisor will:

- a. complete items 8 and 9 of parts 2 through 5 of Form 2276 to acknowledge receipt of the collateral. Notate in the "Remarks" section of part 2, "collateral was received and verified prior to sealing the envelope."
- b. photocopy part 2 of Form 2276.

- (7) Distribution of the Form 2276 as follows:
 - a. retain the photocopy of part 2 to ensure the item appears on the subsequent Area Office Inventory Report.
 - b. store part 2 and the collateral in a secure area as described in IRM 10.2.14.3.2, Security Container.
 - c. send part 3 of the Form 2276 to the IRACS unit for necessary action.
- (8) Seized assets, sales deposits, and other items held are not collateral even though a Form 2276 is prepared; they are held by CEASO for security purposes. When preparing Form 2276:
 - a. Enter seizure number on the collateral deposit record.
 - b. Enter "Safekeeping" in item 6(d) and the value in item 6(e).
 - c. Attach a copy of Form 2433.
 - d. **Do not send a copy of Form 2276 to RRACS.** The use of Form 2276 is for internal control and accountability.

5.6.1.8.1 (12-08-2020)

Rejection of Collateral Security

- (1) CEASO will:
 - a. Check the appropriate block on the reverse of parts 4 and 5 of Form 2276.
 - b. Forward the collateral item together with part 4 to the initiator for return to the taxpayer.
 - c. Retain remaining parts of Form 2276.
 - d. Close out the open CEASO control module on ICS.

5.6.1.8.2 (12-08-2020)

Redesigned Revenue Accounting and Control System (RRACS)

- (1) Collateral inventory is controlled through RRACS. The inventory is maintained in the RRACS database. Refer to IRM 3.17.63.13.3 for additional information regarding RRACS collateral.
- (2) This information is maintained by the RRACS Unit at the Ogden Campus and is reported to each CEASO Area monthly.

5.6.1.9 (05-19-2023)

IDRS Input

- (1) IDRS Transaction Code (TC) 524 is used to identify the kind of collateral security, maintain a control and provide monitoring of the suspended accounts.
- (2) CEASO will prepare Form 4844, Request for Terminal Action, for input of TC 524 with the proper closing code, and the number of cycles of suspension. The cycles of suspension will vary depending on the collateral agreement, for example if the collateral is to be paid in 120 days then you would input the cycles for a review at the end of the 120 days.

TYPE OF COLLATERAL	CC
Surety bond	40
Cashier's, treasurer's, or certified check	41
All other collateral, i.e., bonds, notes, stocks, mortgages, etc.	42

- (3) Input of TC 524 updates the balance due status to 40 or 41, removing it from active inventory.

5.6.1.10 (12-08-2020)

International Collateral Agreements

- (1) There are four types of international collateral agreements. The first three are "non-equity" collateral agreements involving international companies that do not have taxable income, but are involved in business activities with United States owned companies. The fourth is when a taxpayer decides to expatriate from the United States but wishes to defer payment of tax.
 - a. Foreign Investment Real Property Tax Act (FIRPTA) - This type of collateral agreement is controlled in CEASO Mid-Central Territory.
 - b. Federal Insurance Excise Tax - These agreements, as well as (c) and (d) are controlled in the South Atlantic Territory.
 - c. Captive Insurance (CI)
 - d. Expatriate Tax
- (2) For additional information on obtaining collateral serial numbers on "international" collateral agreements, see *IRM 5.6.1.7* and *IRM 5.6.1.8*.

- Alpha characters are used to differentiate different International collateral agreements within the South Atlantic CEASO Territory. The letter "E" is used to designate Federal Insurance Excise Tax collateral. The letters **CI** designate Captive Insurance collateral. The letter "X" designates Expatriate Tax collateral.

5.6.1.10.1 (12-08-2020)

Foreign Investment Real Property Tax Act (FIRPTA)

- (1) The Tax Reform Act of 1984, section 129, 1984-83 (Vol. 1) C.B. 163, added section 1445 to the Internal Revenue Code (IRC) as a means of enforcing the tax imposed by IRC 897 on the disposition of investments in U.S. real property by foreign persons. The disposition of a U.S. real property interest by a foreign person (the transferee) is subject to the Foreign Investment in Real Property Tax Act of 1980 (FIRPTA) income tax withholding.
- (2) See Rev. Proc. 2000-35, IRM 4.61.12, Foreign Investment in Real Property Tax Act and IRM 21.8.5, International, Miscellaneous Foreign Investment in Real Property Tax Act, (FIRPTA) Related Issues, for more detailed discussions of FIRPTA determination procedures.
- (3) CEASO involvement consists in establishing a collateral agreement control when security is pledged as a condition for a large foreign corporation receiving a withholding certificate.
- (4) The acceptable types of security are:
 - Bond with surety or guarantor,
 - Bond with collateral,
 - Letter of Credit,
 - Guarantee, or
 - Any other security acceptable to CEASO territory managers under SBSE Del. Order 4.23.

5.6.1.10.1.1 (12-08-2020)

Processing of Security Agreements

- (1) All requests for withholding certificates are received by the Philadelphia Campus for review by the Examination FIRPTA Coordinator. The withholding certificate requests will consist of:

- Application for Withholding Certificate,
 - Agreement for Payment of Tax (Security Agreement),
 - Collateral Security.
- (2) Those requests involving large foreign corporations are forwarded to the Mid-Central Territory CEASO FIRPTA Coordinator in Pittsburgh, PA to evaluate the collateral security agreement to ensure:
- that it conforms to Rev. Proc. 2000-35; and
 - that the security pledged is adequate to protect the government's interest.
- (3) The CEASO FIRPTA Coordinator will establish an NFOI on ICS, documenting the receipt date, within 7 calendar days of receipt from the Examination FIRPTA Unit.
- (4) If the agreement and/or collateral is not acceptable, the CEASO FIRPTA Coordinator will document any deficiencies in ICS, annotate corrections on a copy of the Agreement, send a 14 day letter and establish a follow-up on ICS.
- a. If no response is received by the follow-up date, send the seven-day follow-up letter
 - b. If no response is received by the second follow-up date, reject the agreement back to the Examination FIRPTA Unit via memorandum stating the reason(s) for rejection, and
 - c. Close ICS NFOI within 10 calendar days.
- (5) If CEASO has other concerns that the request does not conform to the provisions and requirements of Rev. Proc. 2000-35 the CEASO FIRPTA Coordinator will contact area counsel via memorandum to ensure all legal requirements will be satisfied.
- (6) If the agreement is acceptable upon receipt, or worked to an acceptable level, and the collateral security verified, the agreement will be approved in accordance with SBSE Delegation Order 4.23.
- (7) Once the agreement is signed by the CEASO territory manager, a collateral deposit record is created on the Revenue Accounting Control System (RACS) Report 135. See *IRM 5.6.1.8* for instructions on preparation for Form 2276 , Collateral Deposit Record, and establishing a collateral property account on RACS.
- a. Enter the FIRPTA case number provided by the Examination FIRPTA Unit in the top right hand of Form 2276.

- b. All collateral will be secured for safekeeping.
- c. A copy of the executed agreement and a copy of Part 4 of Form 2276 will be sent via memorandum to the Philadelphia Campus Examination FIRPTA Unit.
- d. The Philadelphia Campus Examination FIRPTA Unit is responsible for issuing the appropriate withholding certificate to the applicant.

5.6.1.10.2 (12-08-2020)

Federal Insurance Excise Tax

- (1) IRC 4371 imposes a tax the "insurance excise tax" on certain insurance or reinsurance policies. See Rev. Proc. 2003-78 for the procedures for entering into a closing agreement to obtain a waiver of the insurance excise tax under certain income tax treaties.
- (2) In addition to a number of other requirements outlined in Rev. Proc. 2003-78 for obtaining a closing agreement, the foreign insurer must provide an irrevocable letter of credit (LOC) to be issued by a bank approved by the Service in the amount of \$75,000.
- (3) The Large Business and International (LB&I) business unit has responsibility for the implementation and execution of insurance excise tax provisions.
- (4) CEASO has responsibility for the collateral agreement portion of the program with respect to the maintenance and disposition of the LOC. Program management is under the South Atlantic Territory in the Plantation CEASO office.

5.6.1.10.2.1 (12-08-2020)

CEASO Actions

- (1) After execution of the appropriate closing agreement, LB&I sends the LOC to CEASO.
- (2) CEASO will date stamp the envelope the same day it is received in the office. Within 7 calendar days for receipt, CEASO will prepare and process Form 2276, Collateral Deposit Record, in accordance with *IRM 5.6.1.8*.
- (3) Federal Excise Insurance collateral agreements are identified on the Area RACS 135 Collateral Report with the definer "E" at the end of the CDR.

- (4) The CEASO file will consist of:
- Form 2276, Collateral Deposit Record,
 - Original LOC,
 - Original Amendments, as appropriate,
 - A copy of the Closing Agreement,
 - Power of Attorney, if applicable.

5.6.1.10.3 (12-08-2020)

Captive Insurance (CI)

- (1) An IRC 953(d) election allows a controlled foreign corporation (as defined in IRC 953(d)(1)(A)) that is engaged in an insurance business to elect to be treated as a U.S. corporation for income tax purposes, and, thus, to be subject to U.S. tax on its worldwide income.
- a. Taxpayers that make the elections are corporations that are formed outside the U.S. The majority of income earned by such taxpayers is income that is effectively connected with a U.S. trade or business. Taxpayers make an IRC 953(d) election to avoid the branch profits tax or the branch level interest tax imposed by IRC 884.
 - b. A foreign corporation that makes the election granted under IRC 953(d) waives all benefits granted to it by the U.S. under any treaty between the U.S. and any foreign country. IRC 953(d) was added to the IRC section by the Technical and Miscellaneous Revenue Act of 1988.
- (2) Rev. Proc. 2003-47; IRB 2003-28 provides the procedural rules for foreign insurance companies to make an election under IRC 953(d).
- a. This revenue procedure replaces the procedural rules for making an IRC 953(d) election contained in Section II of Notice 89-79, 1989-2 C.B. 392. The substantive rules contained in Notice 89-79 <https://www.govinfo.gov/content/pkg/GOVPUB-T22-aaf296b1f844da19743e7a36ca791ec6/pdf/GOVPUB-T22-aaf296b1f844da19743e7a36ca791ec6-2.pdf> continue to be effective. The election has been available for tax years beginning after December 31, 1987.
 - b. The taxpayer initiates the election process by filing a completed election statement with CEASO, South Atlantic Area, Plantation

office.

5.6.1.10.3.1 (05-19-2023)

Taxpayer Election Procedures

- (1) The taxpayer must file its election statement with the Plantation office not later than the due date prescribed in IRC 6072(b) (with extensions) for the first return due if the election becomes effective.
 - a. The taxpayer also must timely file (as prescribed by IRC 6072(b) with the Service Center a copy of the election statement with its annual income tax return for the first year for which the election is made. The due date for Form 1120, U.S. Corporation Income Tax Return, filed on the calendar basis is April 15th (excluding a valid extension of time to file (Form 7004, Application for Automatic Extension of Time To File Certain Business Income Tax, Information, and Other Returns). The postmark of the envelope or the electronic submission will be used as the controlling date. A grace period of seven (7) calendar days should be allowed. The IRS will also consider a timely faxed submission of an election statement as long as it is followed with an original. Examples of situations where elections can be considered timely filed:
 - Example:** An election statement was submitted to the Service Center attached to a timely filed tax return, but was not filed separately with the designated office. The original return will have to be ordered from the Service Center. The election is subsequently filed with the designated office after the due date. As long as the intent was to timely file the election, it should be processed as timely.
 - Example:** A separate election statement was not submitted or the statement was not attached to a timely filed return, but the first page of a timely filed return shows that the block next to IRC 953(d) is checked (the block can be found at the top of the form near the name and address). Again the original return should be ordered. The election is subsequently filed with the designated office after the due date.
 - Example:** The taxpayer claims that an election statement was submitted to the designated office but there is no record of having received it. The taxpayer should resubmit the election and provide documentation (i.e. certified receipt acknowledging the

Service's receipt) to show that the original election was timely filed.

- b. With respect to election requests submitted under IRC 501(c)(15) CEASO will determine that the exempt status. See IRM 7.14.1, Employee Plans EDS User Manual, or that Form 1024, Application for Recognition of Exemption under Section 501(a), is on file with the Service.

5.6.1.10.3.2 (12-08-2020)

CEASO Procedures

- (1) Upon receipt of the election, an NFOI Action Code 188 (Captive Insurance) will be loaded onto ICS within 7 calendar days of receipt of the election.
- (2) CEASO will date stamp the envelope or the electronic submission and retain with the election statement. Do not date stamp or make any other notations on the election statement itself. The elections should be batched monthly to coincide with the monthly reporting period. Less than a dozen taxpayer representatives submit the majority of elections, the elections should be further batched by representative within each month's receipts. This will facilitate initial review and preparation of necessary correspondence.
- (3) Elections are reviewed on a first-in, first-out (FIFO) basis. Requests for expedited reviews should not be entertained. Review elections in monthly batches.
 - a. Review the postmark to determine timeliness of filing.
 - b. If the election statement was not timely filed a letter should be mailed to the taxpayer along with a copy of the election statement and envelope or the electronic submission advising them of the late filing.
 - c. The letter provides the taxpayer the opportunity to present any extenuating circumstances and supporting documents.
 - d. The letter should provide a specific date for response and advise the taxpayer of the consequences i.e., case will be closed without further notice.
 - e. While the response date will generally be 30 calendar days from the date of the letter, a 60 day response date is allowed if the contact address discussed in *IRM 5.6.1.10.3.2* is overseas where mail service is sometimes erratic.

- f. Any taxpayer response to the determination of an untimely election should be carefully reviewed and considered. A written response should be mailed to the taxpayer within 10 calendar days of receipt of the response.
- (4) The contact address should be the U.S. address identified in paragraph 6 of the election statement. If a U.S. address is not identified then the foreign address identified in paragraph 1 of the election statement should be used.
- a. If the U.S. address is used, then the foreign address should be added as an “*other address*” in the Name/Address option of the Entity Detail Menu.
 - b. Enter the Power of Attorney data in the Name/Address field.
- (5) A foreign address or country of foreign incorporation should always be identified in the election statement. If not, the election should be returned.
- (6) Review the election statement for errors. Use Appendix A of Rev. Proc. 2003-47 as a guide for the required content. Virtually all of the statements filed will be filed using this suggested format. The following are examples of common errors:
- a. Not timely filed;
 - b. Asset Calculation Sheet not included, out dated figures used, 105 test not met, and/or the entity is not actively involved in insurance business and not for investment purposes (zero gross premiums);
 - c. U.S. shareholders list not attached and or EINs/SSNs missing or incorrect;
 - d. Form 2848, Power of Attorney and Declaration of Representative, and or Form 8821, Tax Information Authorization, not attached or properly executed (unsigned, incomplete, etc.);
 - e. EIN not provided or incorrect;
 - f. Unsigned election statement;
 - g. Compliance (unpaid balance, unfiled return(s));
 - h. Foreign place of incorporation not identified;
 - i. Effective date missing;
 - j. Penalty of Perjury statement missing.
- (7) If corrections are needed, send the appropriate letter to the taxpayer with a copy to the Power of Attorney (POA). All Service requests for

additional information should be in writing and will state the corrections needed, include a specific date for response and advise the taxpayer of the consequences for non-response.

- (8) Determine whether the taxpayer will be providing security (letter of credit) or whether an affiliate will meet the Office/Assets Test for the taxpayer. A closing agreement is required in either situation.
- (9) When an election statement is complete and it conforms to the guidelines prescribed in Rev. Proc. 2003-47 it can be approved by rubber stamping the election statement "APPROVED" . The original stamped election statement is maintained by CEASO with copies sent to the taxpayer and or POA using an original dated cover letter. Keep a copy of the cover letter with the file.
- (10) Annotate ICS history of all actions taken. Once the election is either approved or rejected it should be closed out on ICS. A print of the case history should be maintained with the closed file.
- (11) Those elections where the taxpayer will be providing a letter of credit should initially be opened under Action Code (AC) 188. When the election is finally approved, the AC 188 should be closed and an NFOI reopened under AC 184 (Collateral) for further monitoring.

5.6.1.10.3.3 (12-08-2020)

Collateral Security

- (1) If paragraph 6 indicates that the taxpayer will be providing security, mail the taxpayer Chief Counsel's data sheet titled "For Closing Agreements Where a Letter of Credit is Required" with an appropriate cover letter.
 - a. The data sheet is to be completed by the taxpayer and sent directly to Associate Chief Counsel for International.
 - b. Counsel will prepare the closing agreement (in triplicate, marked Original, Duplicate & Triplicate) and return them to the taxpayer to be signed.
 - c. The taxpayer will return the signed closing agreements back to Counsel to be signed by Deputy Chief Counsel (International-Technical).
 - d. Once signed, the closing agreements will be mailed to CEASO for signature by the delegated official, the CEASO territory manager, South Atlantic Area.

- (2) The agreements are forwarded for signature along with a copy of the election statement and copies of two Counsel memoranda designating the authority to enter into closing agreements as background material.
- (3) At the same time that the closing agreements are sent to the delegated official, notify the taxpayer and POA by fax to submit the letter of credit in the amount designated in the closing agreement. The closing agreement also spells out the proper language and terms and conditions for the letter of credit.
- (4) Upon receipt of the letter of credit, CEASO will review it to ensure it conforms to the requirements as stated in the closing agreement.
 - a. The primary requirements that are reviewed are the correct dollar amount as required by the closing agreement and that the letter of credit contains an "evergreen clause." stating the expiry notification period must be at least six (6) months (180 days) prior to the expiration date.

Note: An evergreen letter of credit is one that has an expiry (expiration) date but contains a provision, referred to as an evergreen clause, that the letter of credit will be automatically extended (rolls over) for indefinite periods until the issuing party informs the IRS and the taxpayer of its final expiration.
 - b. Other conditions required of the letter of credit: It must be conspicuously captioned as a clean irrevocable letter of credit; It must be issued by a U.S. Bank that is a member of the Federal Reserve; The amount of the letter of credit must be written out and stated in numerical form; It must conspicuously state the expiration date; It must state that the letter of credit may be drawn on by a draft of the Internal Revenue Service drawn at sight with no accompanying documentation necessary and duly honored if presented for payment on or before expiration of the letter of credit.
 - c. If the letter of credit does not conform to the aforementioned standards, a letter should be drafted and sent to the taxpayer explaining the required corrections. Do not return the letter of credit. The taxpayer will secure an amendment to the letter of credit from the issuing financial institution.

- (5) After the closing agreement is executed by the delegated official and the letter of credit is received, use the appropriate cover letter to send the taxpayer and POA the triplicate copy of the closing agreement, a copy of the election statement stamped "APPROVED" and Part 1 of Form 2276, Collateral Deposit Record.
 - a. Form 2276 must first be assigned a serial number. *IRM 5.6.1.7* and *IRM 5.6.1.8*
- (6) There will be instances where a taxpayer, who has a letter of credit on file, will be able to meet the Office/Assets Test themselves or have an affiliate meet the test for them. These cases will require an amended election statement/closing agreement and the ICS AC 184 should be closed once the letter of credit is returned. In cases where an affiliate will meet the Office Assets Test for the taxpayer and a closing agreement is required, an Other Investigation (OI) should be opened under AC 188 and closed out once the election is approved.

5.6.1.10.3.4 (12-08-2020)

Compliance Review

- (1) On an annual basis a compliance check should be conducted on all IRC 953(d) entities who are the subject of closing agreements involving letters of credit. The check should ensure that all returns have been filed and paid.
- (2) If there are compliance issues, the appropriate letter should be mailed to the taxpayer addressing the compliance issue(s), providing the entity with a deadline to correct and advising them of the risk of termination of the election.
- (3) The latest filed return should be reviewed by IDRS command code BRTVUE to determine if there could have been an increase in gross income by more than 20 percent of the amount of gross income for the base year.
 - a. The closing agreement requires the taxpayer to monitor and calculate this amount on an annual basis. Experience has shown that this is not always done and therefore the reminder letter is required. Failure to maintain a letter of credit at the proper level is grounds for termination of the election.

- b. Such an increase would require the taxpayer to submit an amended, or new, letter of credit reflecting the new base year assets requirement (10%). Because the gross income as defined in IRC 803 or IRC 832(b)(1) cannot be determined from BRTVUE, the appropriate letter and Assets Calculation Worksheet should be mailed to the taxpayer to be completed and returned.

5.6.1.10.4 (12-08-2020)

IRC 877A - Tax Responsibilities of Expatriation

- (1) Section 301 of the Heroes Earnings Assistance and Relief Act of 2008, the "Act" added IRC 877A which applies to U.S. citizens who relinquish U.S. citizenship, and long-term residents (individuals who have been lawful permanent residents in at least 8 out of the 15 years) who cease to be U.S. residents of the United States, on or after June 17, 2008.
- (2) See Notice 2009-85 and IRM 21.8.1.12.20, IRC 877A - Mark-To-Market Exit Tax, for complete guidance for expatriation and taxable consequences.
- (3) See Form 8854, Initial and Annual Expatriation Information Statement, and Form W-8 CE, Notice of Expatriation and Waiver of Treaty Benefits, for reporting responsibilities for former U.S. citizens or long-term residents who are subject to the provisions of IRC 877A.

5.6.1.10.4.1 (12-08-2020)

Expatriate Tax Provisions

- (1) IRC 877A generally imposes a "mark-to-market" regime on expatriates who are "covered expatriates" defined in IRM 5.6.1.10.4.1(3).
- (2) IRC 877A(g)(2) provides that the term "expatriate" means:
 - any U.S. citizen who relinquishes their citizenship, and
 - any long-term resident of the United States who ceases to be a lawful permanent resident of the United States (within the meaning of IRC 7701(b)(6), as amended).
- (3) A "covered expatriate" as defined in IRC 877A(g)(1)(A) is an expatriate who:

- a. has an average annual net income tax liability for the five preceding taxable years ending before the expatriation date that exceeds a specified amount that is adjusted for inflation
 - b. has a net worth of \$2 million or more as of the expatriation date; or
 - c. fails to certify on a Form 8854, Initial and Annual Expatriation Information Statement, that they complied with all U.S. federal tax obligations for the 5 tax years preceding the date of expatriation.
 - d. there are some exceptions to the definition of “covered expatriate.” See IRM 21.8.1.12.20.1, Covered Expatriate, for additional information.
- .
- (4) The determination as to whether an individual is a covered expatriate is made as of the expatriation date.
 - (5) IRC 877A(g)(3) defines the term "expatriation date" as the date an individual relinquishes U.S. citizenship or, in the case of a long-term resident of the United States, the date on which the individual ceases to be a lawful permanent resident of the United States within the meaning of IRC 7701(b)(6). See IRM 21.8.1.12.20.1, Covered Expatriate, for expatriation date determinations for citizens and long-term residents.
 - (6) Pursuant to IRC 877A(b), a covered expatriate may elect to defer payment of the tax attributable to property deemed sold.

5.6.1.10.4.2 (12-08-2020)

Deferral of Mark-To-Market Tax

- (1) IRC 877A(b) provides that a covered expatriate may make an irrevocable election with respect to any property deemed sold by reason of IRC 877A(a) to defer the payment of the tax attributable to any such property. The deferral election is made on an asset-by-asset basis. In order to make the election with respect to any asset, the covered expatriate must provide adequate security as defined in *IRM* 5.6.1.10.4.3 and must irrevocably waive any right under any U.S. treaty that would preclude assessment or collection of any tax imposed by reason of IRC 877A. The covered expatriate must make the waiver on Form 8854, Initial and Annual Expatriation Information Statement. If the IRS subsequently determines that the security

provided for the deferred tax no longer qualifies as adequate security, the deferred tax and interest will become due immediately, unless the covered expatriate corrects such failure within 60 days after the IRS mails notification of such failure to the last known addresses of the covered expatriate and the covered expatriate's U.S. agent. See IRM 5.6.2.8.4, Expatriate Tax.

- (2) Subject to the preceding sentence, the time for payment of the tax attributable to a particular deferral asset under the mark-to-market regime is extended until the earlier of the due date (without extensions) of the covered expatriate's income tax return for:
- a. the taxable year in which the asset is disposed of by sale, non-recognition transaction, gift, or other means, or
 - b. the taxable year that includes the date of death of the covered expatriate.

However, a covered expatriate may, and should be encouraged to, pay any tax deferred under IRC section 877A(b) together with accrued interest, at any time.

- (3) IRC 877A(b)(7) provides that for purposes of IRC 6601, the last date for the payment of tax will be determined without regard to the deferral election. Interest will be computed at the underpayment rate established under IRC 6621 from the due date of the return (without extensions) for the taxable year that includes the day before the expatriation date and will compound daily under IRC 6622 until the date the tax is paid.
- (4) IRC 877A(b)(5) provides that a covered expatriate may not make a deferral election with respect to a particular asset unless the covered expatriate makes an irrevocable waiver of any right under any U.S. treaty that would preclude the assessment or collection of any tax imposed by reason of IRC 877A. The covered expatriate must make the waiver on Form 8854, which must be filed with the covered expatriate's Federal income tax return for the taxable year that includes the day before the expatriation date. Additionally, acknowledgment of such waiver must be noted in the agreement to defer tax with respect to a particular property (Tax Deferral Agreement) as described below.

5.6.1.10.4.3 (12-08-2020)

Collateral Procedures

- (1) IRC 877A(b)(4)(A) provides that, in order to make a deferral election with respect to any asset, the covered expatriate must provide adequate security with respect to such asset. IRC 877A(b)(4)(B) defines the term "adequate security" as:
- a. a bond that is furnished to, and accepted by, the Secretary, that is conditioned on the payment of the tax (and interest thereon), and that meets the requirements of IRC 6325, or
 - b. another form of security for such payment (including letters of credit) that meets such requirements as the Secretary may prescribe.
- (2) Each covered expatriate who makes a deferral election must enter into a tax deferral agreement with the IRS. Execution of the agreement by the IRS will constitute acceptance by the Secretary of the security as adequate security. A template of a tax deferral agreement is provided in Appendix A of [Notice 2009-85](#). Any covered expatriate who wishes to enter into a tax deferral agreement under this notice must submit to the following address a request to enter into a tax deferral agreement ("deferral request") by the due date of their return for the taxable year that includes the day before the expatriation date:

Department of the Treasury

Internal Revenue Service

Philadelphia, PA. 19255-0049

- (3) The deferral request must include:
- a. two signed copies of the template agreement provided in Appendix A of [Notice 2009-85](#),
 - b. a description of the asset(s) with respect to which the covered expatriate is electing to defer tax,
 - c. an attachment showing the calculation of the tax attributable to such asset(s) under the method set forth in Section E of [Notice 2009-85](#),
 - d. documentation of the proposed security offered to secure the deferral of tax,

- e. a copy of an agreement with a U.S. agent, as described below,
and
 - f. a copy of the covered expatriate's return for the taxable year that includes the day before the expatriation date.
- (4) Provided that the security offered by the covered expatriate is determined to be adequate to secure the tax being deferred, the IRS will sign the tax deferral agreement and provide one copy to the covered expatriate.
- (5) Additionally, the covered expatriate must attach a copy of the deferral request to their return for the taxable year that includes the day before the expatriation date. The covered expatriate may file the deferral request simultaneously with their tax return.
- (6) In order to make a deferral election, a covered expatriate must appoint a U.S. person to act as the covered expatriate's limited agent for the purposes of:
- accepting communication related to the tax deferral agreement from the IRS on behalf of the covered expatriate,
 - the timely enforcement of the terms of the tax deferral agreement between the covered expatriate and the IRS,
 - applying IRC 7602 and all related procedural provisions of the code with respect to a request by the IRS to examine records, for the production of testimony, or for a summons by the IRS for such records or testimony related to the enforcement of the tax deferral agreement.
- (7) If the U.S. agent resigns, liquidates, or terminates its responsibility as an agent of the covered expatriate, the covered expatriate must, within 90 days, notify IRS-CEASO in writing at the following address:

Internal Revenue Service - CEASO

7850 SW 6th Court

Mail Stop 5780

Plantation, FL. 33324-3202

Telephone: 954-423-7344, Fax: 954-423-7809

- (8) This notification must contain the name, address, and TIN of the new U.S. agent (if any). If no new agent is appointed, then the tax deferral agreement will be in default and the collateral will be applied to the deferred tax and interest attributable to all of the deferral assets.
- (9) In the event that the security provided with respect to a particular property subsequently fails to meet the requirements of the deferral agreement and the individual fails to correct such failure, the deferred tax and the interest with respect to such property will become due immediately.
- (10) The covered expatriate will have 60 days to correct such failure after the Service mails Letter 4536, Insufficient Initial Collateral, providing notification of such failure to the last known addresses of the covered expatriate and the covered expatriate's agent.
- (11) The tax deferral agreement shall be effective for a period of three years from the date of execution and may be renewed.

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