



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

SMALL BUSINESS/SELF-EMPLOYED DIVISION

December 3, 2012

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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 Letter 1153W, Proposed Trust Fund
Recovery Penalty Rescission Notification

This memorandum provides interim guidance on the use of new Letter 1153W, *Proposed Trust Fund Recovery Penalty Rescission Notification*. Please ensure that this information is distributed to all affected employees within your organization. This guidance is effective immediately.

If information that was not available prior to the issuance of Letter 1153(DO) is received before the assessment of a Trust Fund Recovery Penalty (TFRP) and results in a decision by the revenue officer to reverse all or a portion of the periods on Letter 1153(DO), the revenue officer will take the following actions:

- Document ICS history with the facts supporting the decision to reverse the prior recommendation.
- Amend Form 4183, *Recommendation re: Trust Fund Recovery Penalty Assessment*, on the Automated Trust Fund Recovery Program (ATFR) and submit the TFRP case file for managerial review and approval.
- After group manager approval of the amended Form 4183, generate L1153W using ATFR for the applicable periods no longer recommended for assertion.
- Issue Letter L1153W and a copy of Letter 1153(DO) to the taxpayer.
- Retain a copy of Letter 1153W in the TFRP case file.

- If the assessment recommendation is reversed for all periods, the TFRP file should not be forwarded to Control Point Monitoring (CPM). Retain the information in the business case file.

If Letter 1153W is issued, it will nullify Letter 1153(DO) for the periods listed on Letter 1153W, and there will be no effect on the Assessment Statute Expiration Date (ASED).

TFRP Protest Cases

If a taxpayer submits a protest and provides additional information that changes the revenue officer's determination on the case, the revenue officer may concede the case in whole or in part. If a responsible party protests the entire assessment and the revenue officer concedes the case in whole, the revenue officer will follow the procedures detailed above. If the revenue officer concedes the case **in part**, the revenue officer will follow the procedures detailed above for the periods conceded and the TFRP protest processing guidance contained in SBSE-05-0812-062, *Interim Guidance for Ex Parte Communications with Appeals*, for periods not conceded. Due to the clarification on ex parte communication with Appeals contained in Revenue Procedure 2012-18, *Ex Parte Communications between Appeals and other Internal Revenue Service Employees*, which applies to communications that take place after May 15, 2012, it is important that revenue officers document ICS regarding the determination factors **only** for those periods being conceded.

The revenue officer should not make any comments in the ICS or ATFR histories regarding the merits of the protest for the periods not conceded and should not prepare any memorandum discussing the issues or the basis for the original assertion recommendation.

Letter 1153W cannot be issued after a protest has been forwarded to Appeals.

Example

A revenue officer (RO) conducts a TFRP investigation, secures managerial approval of Form 4183, and issues Letter 1153(DO). After issuing Letter 1153(DO), the RO receives additional information that results in a decision to reverse the recommendation in whole. The RO documents ICS, prepares an amended Form 4183, and submits the TFRP case file for managerial review and approval. Following managerial approval of the amended Form 4183, the RO generates and issues Letter 1153W to the taxpayer.

Example

An RO conducts a TFRP investigation, secures managerial approval of Form 4183, and issues Letter 1153(DO). After issuing Letter 1153(DO), the RO receives a protest with additional information that results in a decision by the RO to reverse the original assessment recommendation in part. The RO documents ICS, addressing only the information related to the periods being conceded, prepares

an amended Form 4183, and submits the TFRP case file for managerial review and approval. Following managerial approval of the amended Form 4183, the RO generates and issues Letter 1153W to the taxpayer for the periods being conceded only. The RO follows guidance in SBSE-05-0812-062, *Interim Guidance for Ex Parte Communications with Appeals*, to transmit the non-conceded periods to Advisory.

If the TFRP will not be assessed on any periods, the TC 130, *Entire Account Frozen from Refunding*, which is systemically generated following approval of Form 4183, must be reviewed to determine if reversal of the TC 130 is appropriate. The TC 130 may remain appropriate on an individual account, as there may be additional pending TFRP assessments from a different business or related sole proprietor liabilities. If none of these circumstances are present, initiate action to input TC 131, *Reversal of TC 130 Refund Freeze*.

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