



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

SMALL BUSINESS/SELF-EMPLOYED DIVISION

October 21, 2014

Control No: SBSE-04-1014-0079

Expires: October 21, 2015

Impacted IRM: 4.23.2; 4.23.10; 4.23.13; 4.23.14

MEMORANDUM FOR EMPLOYMENT TAX TERRITORY MANAGERS, GROUP  
MANAGERS AND SPECIALISTS

FROM: Dan Lauer */s/ Dan Lauer*  
Acting Chief, Employment Tax Operations

SUBJECT: Interim Guidance - Statute of Limitations for Appealed  
Employment Tax Cases

The purpose of this memorandum is to provide guidance for employment tax cases transmitted to and from Appeals.

The Appeals Judicial Approach and Culture (AJAC) is an Appeals initiative that impacts compliance functions Service-Wide. It is intended to clarify Appeals' core mission which is issue resolution and an enhanced customer perception of a fair, impartial, and independent Office of Appeals. Appeals issued Interim Guidance ([AP-08-0714-004](#)) affecting Examination cases received in Appeals. Most changes became effective for all new Appeals cases receipted on or after September 2, 2014. Although several changes will impact the processing of SB/SE Employment Tax cases, the most significant relates to the statute of limitations.

Effective September 2, 2014, cases closing to Appeals for the first time will need **at least 365** days on the statute of limitations for assessment when they are received in Appeals.

Additional changes regarding statutes are also being implemented:

- There must be **at least 210** days remaining on the statute of limitations when a case is received in Employment Tax, if Appeals returns the case to Employment Tax for consideration of new information or new issues raised by the taxpayer.
- There must be **at least 180** days remaining on the statute of limitations when a case is received in Appeals, if Appeals previously released jurisdiction of the case and returned it to Employment Tax for additional work.

For purposes of Employment Tax case processing, examiners should be aware of the 365-day requirement and plan accordingly when issuing a 30-Day Letter. Examiners should plan for 30 days to allow for shipping and processing a case through Technical Services before being sent to Appeals. This would then require at least 395 days remaining on the statute when closed from the group ([IRM 4.10.8.12.1](#)) and 425 days (365+30+30) on the statute when issuing the 30-Day Letter. Examiners should also account for time needed to review the protest, prepare any rebuttal, and close the case from the group.

If the statute is imminent for the unagreed tax year, explain to the taxpayer that an administrative appeal cannot be provided without a statute extension ([IRM 25.6.22.2.1](#)). Follow existing procedures of providing Publication 1035 when soliciting the Form SS-10 and using [Form 10949](#), Statute Extension Checksheet, as a guide when preparing, issuing, and receiving consents to extend the statute of limitations.

If a statute extension is not received, the appeal rights discussed in the 30-Day Letter ([Letter 950-C](#) for IRC Section 7436 issues and [Letter 950-D](#) for non-Section 7436 issues) will not apply. If the taxpayer refuses to execute an extension, the examiner should document on the Activity Record (Form 9984) the taxpayer's refusal and that inadequate time remains to forward the case to Appeals. Provide the taxpayer with a copy of the Employment Tax Examiner's Report along with the Explanation of Adjustments and clearly notate the Activity Record with the date. Follow existing procedures for forwarding the case file to Technical Services for issuance of a Notice of Determination of Worker Classification (Letter 3523) for IRC Section 7436 issues and to Centralized Case Processing for non-Section 7436 issues.

This guidance is effective immediately and will be incorporated in the following impacted IRM sections by October XX, 2015.

- IRM 4.23.2, *Employment Tax Examination Objectives*
- IRM 4.23.10, *Report Writing Guide for Employment Tax Examinations*
- IRM 4.23.13, *Employment Tax Refund or Abatement Claims*
- IRM 4.23.14, *Statute Control and Extension*

If you have any questions concerning the guidance in this IGM, you may contact Ed Hutzmann, Senior Policy Analyst, SB/SE Employment Tax.

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