

## IRM PROCEDURAL UPDATE

**DATE:** 01/14/2015

**NUMBER:** WI-21-0115-0113

**SUBJECT:** Tax Relief in Employment Tax Cases; Form 4669 Procedures

**AFFECTED IRM(s)/SUBSECTION(s):** 21.7.2

**CHANGE(s):**

**IRM 21.7.2.5.8 Retitled and revised to address the availability of relief under IRC 3102(f)(3) from payment of Additional Medicare Tax assessed by Exam during employment tax examinations.**

<b>Section 3402(d) and Section 3102(f)(3), Tax Relief in Employment Tax Cases (Forms 4668, 4669, and 4670)</b>	
<ul style="list-style-type: none"><li>• 21.7.2.5.8.1 Processing Procedures for Forms 4669 and 4670</li></ul> <ol style="list-style-type: none"><li>1. During the course of an examination, the IRS may determine an employer/employee relationship exists and propose the assessment of tax, penalties and interest. This assessment may include income tax and/or Additional Medicare Tax (AdMT) that should have been withheld from amounts paid to employees.</li><li>2. Form 4668, <i>Employment Tax Examination Changes Report</i>, is the basic report used for all employment tax return examinations.<ul style="list-style-type: none"><li>○ It is used to show the additional tax, over-assessment, or delinquent tax proposed by the examiner.</li><li>○ It should be attached to the last quarter return examined as part of the Revenue Agents Report.</li></ul></li></ol> <p style="margin-left: 40px;"><b>NOTE:</b> TC 971 AC 057 is sometimes used by Exam to designate a cross-reference account where relevant documentation is located.</p> <p style="margin-left: 40px;"><b>NOTE:</b> Form 4668-B, <i>Report of Examination of Withheld Federal Income Tax</i>, is generally used for backup withholding issues.</p> <li>3. Form 2504, <i>Agreement to Assessment and Collection of Additional Tax and Acceptance of Overassessment</i>, and Form 2504-WC, <i>Agreement to Assessment and Collection of Additional Employment Tax and Acceptance of Overassessment in Worker Classification Cases</i>, are used to obtain a taxpayer's agreement to the proposed assessment or over-assessment of employment tax.<ul style="list-style-type: none"><li>○ An error is considered ascertained on the date the signed Form</li></ul></li>	

2504 is received by the IRS. Therefore, the additional tax must be paid at the time the signed Form 2504 is received for the assessment to be completely interest-free.

- Form 2504 should be attached to the same period's return as Form 4668.
4. When specific conditions are met, the Internal Revenue Code (IRC) provides relief from paying certain employment taxes proposed or assessed by Exam:
- IRC 3402(d) provides relief from paying income tax proposed or assessed by Exam if the employee reported the income and paid the taxes due with the employee's income tax return. IRC 3402(d) relief also applies to Exam assessments of backup withholding.
  - IRC 3102(f)(3) provides relief from paying Additional Medicare Tax (AdMT) proposed or assessed by Exam (for tax periods beginning after December 31, 2012) if the employee reported the income and paid AdMT due with the employee's income tax return.

**CAUTION:** Income tax withholding assessed under IRC 3509 is not subject to abatement. See IRM 21.7.2.5.4 for more information on IRC 3509.

5. To obtain relief under IRC 3402(d) and/or IRC 3102(f)(3), employers must:
1. Secure a signed Form 4669, *Statement of Payments Received*, from the employee(s) covered by the examination.
  2. Prepare and sign a Form 4670, *Request for Relief from Payment of Income Tax Withholding*, indicating the tax year and number of statements (Form 4669) secured.
  3. Submit the signed Form 4670 with the signed Form(s) 4669 attached.

**EXCEPTION:** If the tax due was paid prior to the filing of the Forms 4670 and 4669, then the Forms 4670 and 4669 must be attached to a properly completed claim form (Form 94XX) since that situation constitutes a claim for refund rather than a request for relief from payment as provided for under IRC 3402(d) or IRC 3102(f)(3).

6. The Revenue Agent/Officer conducting the examination provides the employer with an extra copy of Form 4668 along with blank Forms 4669 and 4670. The employer is instructed to file the copy of the Form 4668, a Form 4670, and Form(s) 4669 with the appropriate campus.

**NOTE:** Revenue Agents/Officers may process Forms 4670 and 4669 received before the examination is closed as per guidance in IRM 4.23.8.4.3, *Procedures for Granting Relief Under IRC 3402(d) and/or*

**IRM 21.7.2.5.8.1 Revised to address the availability of relief under IRC 3102(f)(3) from payment of Additional Medicare Tax assessed by Exam during employment tax examinations and to account for changes to Form 4668 and Form 4669.**

1. Requests for relief under IRC 3402(d) and/or IRC 3102(f)(3) are **not** Exam criteria even though they involve tax accounts that were previously examined.
2. # [REDACTED] #
3. The Form 4668 for the case must be secured to determine the amount of tax for which relief can be granted under IRC 3402(d) and IRC 3102(f)(3). Take the following actions if the employer submits Forms 4669 and 4670 without a copy of the Form 4668:
  1. Make two attempts to contact the employer (or an authorized representative) by phone to obtain a copy of the Form 4668.
  2. If unable to obtain the Form 4668 from the employer, request the TC 30X assessment document (or controlling DLN) on the last quarter of the calendar year shown on Form 4670.

**NOTE:** If the TC 30X assessment document is charged out to Examination on an initial document request, suspend the case and request the document again after 30 days.

3. If a copy of the Form 4668 cannot be obtained from the employer or from Files as per the above procedures, return the Forms 4669 and Form 4670 to the employer with instructions to resubmit the documents with a copy of the Form 4668.
4. Use Forms 4668 and 4669 to determine the amount of tax to be adjusted as follows:

**EXCEPTION:** Area Office Forms 3870, *Request for Adjustment*, do not need to be verified against Form 4668.

○ **IRC 3402(d) relief requests:**

- 1) For the calendar year involved, add the figures shown on line 6a, "Payments subject to Income Tax Withholding" (line 6b, "Payments subject to Backup Withholding", for backup withholding), of the Form(s) 4669 submitted with Form 4670.
- 2) Multiply the figure determined in step 1 above by 28% (.28).
- 3) The amount of the tax adjustment to be made is limited to the **lesser** of the tax figure determined in step 2 above or the amount shown on line 12, "Maximum tax available for abatement under IRC 3402(d)", of Form 4668 (or line 20 of Form 4668-B).

**CAUTION:** If line 12, Form 4668, is zero, blank or "none", do not make any adjustment to income tax withheld (or backup withholding).

○ **IRC 3102(f)(3) relief requests:**

- 1) For the calendar year involved, add the figures shown on line 6d, "Payments subject to Additional Medicare Tax Withholding", of the Form(s) 4669 submitted with Form 4670.
- 2) Multiply the figure determined in step 1 above by 0.9% (.009).
- 3) The amount of the tax adjustment to be made is limited to the **lesser** of the tax figure determined in step 2 above or the amount shown on line 13, "Maximum tax available for abatement under IRC 3102(f)(3)", of Form 4668.

**CAUTION:** If line 13, Form 4668, is zero, blank or "none", do not make any adjustment to AdMT.

**NOTE:** The instructions above are based on current form versions. Relief requests filed on earlier versions of Form 4669 are to be processed whenever possible. See archived IRM versions if information relating to previous form versions is needed, including previous line numbers and line titles.

**NOTE:** Revised Form 4669 includes line 6c, "Payments to Foreign Persons subject to Withholding Tax", which can be used by taxpayers to request relief from payment of certain taxes proposed or assessed by Exam. Requests for relief of taxes related to payments which could be reported on line 6c of Form 4669 should not be received in Accounts Management. Contact the IRM author through the campus P & A Staff for guidance on resolving or rerouting the case if a Form 4669 is received in Accounts Management with a figure entered on line 6c of Form 4669.

5. When the claim can be processed, adjust the module for the proper amount using either TC 291 or TC 299 (along with the appropriate IRNs) as follows:

If	And	Then
The employer signed the Form 2504	Interest is not restricted on the module	Input TC 299 with an "interest from" date using the date the original signed Form 2504 was received by the IRS.
The employer signed the Form 2504	Interest is restricted on the module	Interest must be manually computed and adjusted <b>unless</b> the assessment qualified as a completely interest-free adjustment. Input TC 299 with an "interest from" date using the date the original signed Form 2504 was received by the IRS and the appropriate TC 34X amount. No

		underpayment interest is due on the amount being abated under IRC 3402(d) and/or IRC 3102(f)(3). However, underpayment interest is due on any remaining amount of the assessment from the date the original Form 2504 was received to the date of full payment.
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**NOTE:** If the Form 2504 is unavailable, and there is a TC 308 on the module, use the date of the TC 308 for the interest computation date when following the procedures in the table above. If there is no TC 308, request the assessment document or contact the employer for a copy of the Form 2504. Fax copies are acceptable.

6. Restrict any penalty assessments on the module if a tax decrease made under these procedures would cause penalties to recompute. The employer is liable for all penalties as a result of the examination. Penalties should not be decreased when tax is adjusted.
7. Documentation for the adjustment must include the Forms 4669 and 4670 provided by the employer, copy of the Form 4668, and Form 2504 (if secured).