

IRM PROCEDURAL UPDATE

DATE: 05/08/2013

NUMBER: SE-04-0513-0896

SUBJECT: Updates to CAWR IRM 4.19.4

AFFECTED IRM(s)/SUBSECTION(s): 4.19.4

CHANGE(s):

IRM 4.19.4.3.24 *Foreign Students/Non-Resident Visitors, deleted note.*

1. When an employer states any or all of their employees are foreign students they may be exempt from SSA and Medicare tax. The procedures in this subsection are necessary.

IF	AND	THEN
Social Security and Medicare tax is erroneously withheld by the employer	The foreign student is unable to obtain reimbursement from the employer	The student files Form 843 to receive a refund of the erroneously withheld taxes.

2. Check TXMODA for an adjustment containing information defined below.
 - o 291 10162003 1,721.24- 200340 98154-123-45678-3
 - o 004 22,499.77- 007 1,721.24-
 - o 073 22,499.77-
 - o 820 01312004 200340 98 (or 60, 78, or 66)124-123-45678-3
 - o XREF-TIN> 123-45-6789 XREF-MFT> 30 XREF-TX-PRD> 200312
3. Research adjustment to verify the below criteria.
 - o The Reference amounts (004, 005, 073) may match the Form 941/944/W-2 CAWR discrepancy
 - o The tax amount is 1/2 of the Social Security and Medicare tax amount (wage amount X 7.65%)
 - o A TC 820, Credit Transfer, has been input with X-Ref SSN (The Foreign Student's SSN) to X-Ref MFT 30.
 - o The DLN begins with 98, 60, 78, or 66.
 - o The original adjustment is done in Philadelphia, Cincinnati or Ogden.
4. Check CC IRPTRL on the student's SSN. There should be a Form W-2 for the adjusted reference amount from the EIN (employer) on the CAWR case.

IF	THEN
see the adjustment above	1. Complete Form 6209 to decrease Social Security and medicare wages. In the remarks, select

is present	<p><i>"Other"</i> and enter <i>"Exempt Foreign Student."</i></p> <ol style="list-style-type: none"> 2. Complete Form 6494 using correction code 4 and notate the need to cancel the Form W-2 due to the foreign student criteria. 3. Attach a copy of the Form W-2 or give employee name, SSN, and wage amount to be canceled. 4. Send a 2057C letter to notify the employer, the employee's half of the Social Security and medicare tax was refunded to his foreign employee. Inform the employer they must file a claim on Form 941-X within three years of when the tax return was filed or two years from when the tax was paid if they wish to request a refund of the employer's half of the Social Security and Medicare taxes. 5. File Correspondence following the "IRS-CAWR No Assessment needed" case processing procedures. IRM 4.19.4.7.1
If the employer files a Form 941-X / Form 843 for his half of the tax,	<ol style="list-style-type: none"> 1. Send 2057C letter explaining actions taken and close CAP with the appropriate closing code. 2. Input TC 291 with item adjustment code 112 for the tax amount. Do not decrease the Reference amounts 004, 073, or 005 a second time.

NOTE: if the adjustment document is requested (using CC ESTAB) and the DLN begins with 98 it should show a copy of the student's Form W-2 and VISA. In addition a letter stating the foreign student was unable to obtain reimbursement from their employer along with Form 843.

IRM 4.19.4.2.15 Federal Agency Screening, updated process to include referring cases to FAD unit in BSC.

1. Employers that are Federal Agencies can be identified by name and will always have a BOD Code TEGE and an Employment Code F.
2. Although the law allows us to assess tax, we can not assess any type of penalty on Federal Agencies. Our goal is to balance the discrepancy, and/or to file the necessary Forms W-3/W-2/W-3C/W-2C in order for their employees to get proper credit.
3. Contact the Federal Agency Delinquency (FAD) unit located in BSC by either contacting the employee with an open control or by using SERP. http://serp.enterprise.irs.gov/databases/who-where.dr/fad_contacts.html prior to issuing correspondence.

4. Request from the assigned FAD unit employee if they want to resolve the CAWR issue or if they want CAWR to continue normal processing. Close the case or issue correspondence as appropriate.

IRM 4.19.4.3 Replies, added instructions to refer Federal Agency cases to FAD unit in BSC prior to assessment.

1. There are so many variables in the CAWR program, the replies are broken into many different categories. The following subsections deal with individual type replies.

REMINDER: When working replies follow instructions for inputting Correspondence Date (Corr Date in IRM 21.3.3.4.2.3 Correspondence Date (Corr Date))

2. When working replies received from the taxpayer (in response to IRS correspondence you issued) remember that care must be taken to attempt to conform to the **Policy Statement P-21-3** which states "If you cannot initiate a final response within 30 days from the earliest IRS received date, you must initiate an interim response."
3. There may be times during the response phase when calling the taxpayer will expedite the resolution of a case. For example; when taxpayers respond to a notice, they may inadvertently omit required information or signatures delaying the action on the case. If additional information is required to resolve a case, attempt to contact them by phone prior to making the assessment on the account. See the CAWR/FUTA web page at <http://wc.web.irs.gov/Default.htm> and http://serp.enterprise.irs.gov/databases/portals.dr/compliance.dr/crc.dr/cawr_futa/cawr_futa_default.htm
4. When assessing a **FTD penalty**, use **PCC 018**(Penalty Computation Code). See IRM 4.19.4.7.3 *Failure To Deposit Penalty* (TC 180) and 20.1.4.21.6.1 *Computation of the FTD Penalty (CAWR and FUTA Notices)*.
5. If a **TC 780/788 (unreversed by a TC 781)** is present on any module of the tax year that you are working during the reply, undeliverable or no-reply phase, no tax or penalty can be assessed. Take the following actions:
 1. Provide prints of the Money Amount and the Detail screens from CAP to the appropriate MOIC unit.
 2. File the correspondence using the applicable Case Processing Procedure. See IRM 4.19.4.7.
 3. Close the case with closing code 98.
6. When an account has a **TC 300 or TC 308 on any module of the tax year you're working, do not assess**; close the case with *No Assessment Needed Processing Procedures* found in 4.19.4.7.
7. Replies may also be **Forms 4442** that are referrals of CAWR cases from CSRs. Provide the taxpayers with interim responses (by telephone or in writing) if Tax

Law Referrals of cases cannot be resolved within seven (7) calendar days or Account Referrals of cases cannot be resolved within fifteen (15) calendar days.

8. When working responses, close the case with the appropriate closing code instead of preparing the Form 6209 if:
 - o No money fields are being changed
 - o **##**
 - o **##**
9. If contact is needed with a CAWR unit at another SBSE site, the phone numbers and fax numbers are located on the CAWR/FUTA home page.
10. When the taxpayer **submits a payment** for the proposed discrepancy, and no correspondence is attached, take the following actions:
 - . Accept the payment,
 - a. Assess the intentional disregard penalty IRM 4.19.4.3.1.1 *The Intentional Disregard Failure to File Penalty (PRN 549)*
 - b. Assess tax and any related penalties,
 - c. input the amount of the penalty in the amount field, and
 - d. Close the case with the appropriate closing code.
11. **Third Party Contacts**, Section 7602 (c), **does not apply** to any contact with any office of any local, state, federal, or foreign government entity. Third Party Contacts **do apply** if the business entity is directly conducting business with or employed by the government office contacted.
12. When the taxpayer response indicates that the tax discrepancy and/or penalty discrepancy has been paid by a **third party**, research/correspondence (by letter or telephone) must be done to validate the taxpayer's claim of payment. **Do not** just accept the taxpayer's statement that the payments were paid by a third party. Use the following steps as a guide for proof of payment(s):
 - o Third party name and EIN must be provided in order to check for posted payments.
 - o Copy of the cancelled check (front and back) payable to the Service for the discrepant tax and/or penalty amount(s) may be provided to prove payment and ownership of payment.
 - o Verify whether the third party pays Sick Pay for employer (see IRM 4.19.4.3.16 *Responses Identifying Third Party Sick Pay*) or is plan administrator for the employer (see IRM 4.19.4.3.34 *Replies relating to Forms 945/1099R*).

IF	THEN
Third party name and EIN (check for posted payments) is found and the issue is not related to Third Party Sick Pay or third party plan administrator.	<ol style="list-style-type: none"> 1. Transfer the payments to the correct taxpayer's account using the credit transfer IAT. 2. Enter the appropriate tax assessment or civil penalty amount you will be assessing and the number of quarters adjusted on the CAP detail

	<p>screen and close the case using the appropriate closing code.</p> <p>3. Follow the appropriate CAWR assessment case processing procedures. See IRM 4.19.4.7.</p>
Third party name and EIN (check for posted payments) is not found	<p>1. Correspond with the taxpayer and explain that they are responsible for the discrepant amount(s) regardless of the third payer.</p>

13. Whenever a taxpayer makes a reference to any of his forms being fraudulently filed by another party or claims there is a fraud or identity theft issue, refer the case to HQ.
14. When a reply is received that is identified on IDRS as a Federal Agency (BOD code TEGE with Employment Code F) refer the case to the FAD unit prior to assessing the case. See 4.19.4.2.15 *Federal Agency Screening* for more information.

IRM 4.19.4.3.1.2 *Late Filed Forms W-2 Penalty (PRN 550)*, updated PRN 550 amounts per new regulations.

1. The Late Filing Penalty Assessment (PRN 550) is assessed by CAWR in the reply phase, when original Forms W-2 filed in response to SSA-CAWR correspondence are received. These forms are always subject to the maximum penalty of \$100.00 (\$50.00 for SSA CAWR tax years 2009 and prior) for each Form W-2 unless the Form W-2 shows no FIT, Social Security tax, Medicare tax, and only reports Total Compensation. Up to \$500,000 for small businesses with gross receipts of \$5 million or less and \$1,500,000 for large businesses with gross receipts over \$5 million per year may be assessed. Consider submitted Forms W-2 as original filings when:
 - a. the taxpayer does not state the Forms W-2 were previously submitted **OR**
 - b. the taxpayer states the Forms W-2 were previously submitted and further **BMFOLU and SSA (ORS or ERQY)** research does not support the claim.
2. When the employer submits Forms W-2 always research BMFOLU prior to assessing the Late Filing Penalty:
 - a. If all of the submitted Forms W-2 have already posted to BMFOLU, do not assess the Late Filing Penalty.
 - b. If research shows that some of the missing Forms W-2 were previously filed, then assess the late filing penalty only on the remaining out-of-balance Forms W-2. Further SSA (ORS or ERQY) research may be needed to research for the Forms W-2 if the taxpayer stated that the Forms W-2 were previously submitted. See (1) above.

3. DO NOT ASSESS A CIVIL PENALTY (PRN 550) ON ENTITIES THAT ARE:

- a. Forms W-2C submitted in response to CAWR correspondence
- b. Federal Agencies
- c. Defunct (cc 07 or 10) or Bankrupt Corporations
- d. Forms that BMFOLU or SSA research confirm were filed timely with SSA.
- e. The Employment Code is "S". See IRM 4.19.4.4.
- f. See Exhibit 4.19.4-4.
- g. When the employer establishes reasonable cause IRM 20.1.7.8.1 and IRM 20.1.1.3.2

IRM 4.19.4.3.1.3 SSA-CAWR Reply Procedures, updated PRN 550 procedures in 1st, 3rd, and 4th If/Then boxes.

1. SSA-CAWR replies occur when taxpayers submit W-2 data prior to the expiration of the CAP correspondence suspense period.
2. If the taxpayer provides W-2 information in other than the official format (i.e., a computer listing providing the employee name, SSN, wages, tips, federal income tax withheld) accept the information as if it was the actual Form W-2 and note or identify each field on the first Form(s) W-2 data so SSA will know which fields are present on the listing(s).
3. Follow the procedures below when working SSA-CAWR indicator 2 reply cases.

IF	THEN
The Form(s) W-2 balances the SSA-CAWR case	<ol style="list-style-type: none">1. Prepare Form 9338 and attach Forms W-2 for submission to SSA2. Assess Late Filing Penalty if you have three or more Forms W-2. If you do not, file correspondence. See IRM 4.19.4.7.2. <p>NOTE: DO NOT prepare a Form 6209. When SSA processes the forms, the master file will be updated at that time.</p>
The Form(s) W-2C balances the SSA-CAWR case	<ol style="list-style-type: none">1. Prepare Form 6209 and Form 9338 and attach Forms W-2C for submission to SSA.2. Associate with case folder to allow for review.3. File the correspondence using the SSA-CAWR No Penalty Needed

	<p>Processing Procedures. See IRM 4.19.4.7.2.</p>
<p>The SSA-CAWR reply does not balance the case:</p> <p>EXAMPLE: The reply includes a partial number of Forms W-2.</p>	<ol style="list-style-type: none"> 1. Make a copy of any Forms W-2/W-2C to attach to the case file. 2. Prepare Form 9338 and attach Forms W-2/W-2C for submission to SSA. 3. Assess Late Filing Penalty if you have three or more Forms W-2 and the Intentional Disregard (PRN 549) Penalty for any remaining discrepancy. See IRM 4.19.4.7.2. <p>EXCEPTION: When there are more than 100 Forms W-2/W-2C are submitted, only photocopy the Form W-3/W-3C for inclusion in case file.</p>
<p>The SSA-CAWR reply includes Forms W-2 increasing the Social Security wages, Social Security tips, medicare wages, FIT, and/or AEIC to more than the 94X amounts</p>	<ol style="list-style-type: none"> 1. Make a copy of any Forms W-2/W-2C to attach to the case file. 2. Prepare Form 9338 and attach Forms W-2 for submission to SSA. 3. Assess Late Filing Penalty if you have three or more Forms W-2 (PRN 550)submitted. See IRM 4.19.4.7.2. 4. Assess the additional tax using a posting delay code 3 to ensure the letter is received before the adjustment notice. See IRM 4.19.4.7.1. <p>EXCEPTION: When there are more than 100 Forms W-2/W-2C are submitted, only photocopy the Form W-3/W-3C for inclusion in case file.</p> <p>REMINDER: The 98C Letter informed the taxpayer that additional tax, and/or a penalty may be charged if the amounts on the Forms 94X and the Forms W-2</p>

	differ.
The SSA-CAWR reply has Information on magnetic media (tape or disc),	<ol style="list-style-type: none"> 1. Send a 2057C explaining that SSA no longer accepts Mag Media and request a listing or copies of Forms W-2 and Form W-3. 2. Assess the Intentional Disregard Penalty. See IRM 4.19.4.7.2.