



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

SMALL BUSINESS/SELF-EMPLOYED

October 21, 2013

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Affected IRM: 4.24.6.9.1 and
4.24.10.5.7.2
Expiration Date: October 1, 2014

MEMORANDUM FOR ALL EXCISE TERRITORY MANAGERS AND FIELD GROUP
MANAGERS

FROM: Joseph J. Tiberio /s/ Joseph J. Tiberio
Chief, Excise Tax Program

SUBJECT: Reissue Interim Guidance Procedures for Closing No Liability
Substitute for Return (SFR) Non-Filer Cases

The purpose of this memorandum is to reissue SBSE-04-1012-088 dated October 17, 2012 which provided interim guidance procedures regarding the proper closing of no liability SFR non-filer cases. Please ensure this information is distributed to all affected employees and managers within your organization.

Effective immediately, these cases are to be closed using disposal code 36 rather than no changed (disposal code 02). This interim guidance memorandum only applies to situations where the examiner has conducted interviews, reviewed books and records, and ultimately made a determination that the taxpayer is not liable for Excise Tax. Historically, we have closed these cases as no changes using disposal code 02. In situations where no examination of books and records occur, our current process utilizing Form 10904, *Request Record Deletion from AIMS*, and the survey procedures found in IRM 4.24.10.5.1 will apply.

When a case is closed using disposal code 36, it is processed as a non-examined closure. Since an interview was conducted and books and records were reviewed, in essence an examination was performed. However, the examiner ultimately made a determination that the taxpayer is not liable for Excise Tax. As a result, there are certain procedures that need to be followed when processing both the IMS electronic file and the paper file that is processed through Centralized Case Processing (CCP). In addition, the taxpayer needs to be issued correspondence that clearly reflects the examination findings.

Letter 930 Procedures for No Liability SFR Non-Filer Cases

The examiner shall prepare two copies of Form Letter 930, advising taxpayer there is no liability for the tax indicated, along with a previously addressed envelope to the

taxpayer. Both copies of Letter 930 shall be placed in the case file. CCP will mail one of these copies to the taxpayer.

In addition, the examiner will note in the Letter Instructions for CCP section of Form 3198, "Other Instructions" box, "No Liability SFR-Issue Letter 930 to the Taxpayer". The current version of Letter 930 (rev 8-1984) will be used. Letter 930 will be signed on behalf of the Chief, Excise Tax Program. We hope to have an updated version of the letter available in the near future.

Completion of Form 5351, *Examination Non-Examined Closings*

The examiner shall prepare, and the group manager shall sign and date, Form 5351. Form 5351 is used by CCP to close the no liability SFR non-filer case from the Audit Information Management System (AIMS). The Form 5351 will include the taxpayer name, TIN, MFT, Tax Year and disposal code (36). The examiner will note on the Special Features section of Form 3198, "Other Information", "No Liability SFR- Process Form 5351".

IMS Case Closing

Normal IMS closing procedures for regular cases are to be followed for the no liability SFR cases. Examiners will still need to create an issue for the activity code, charge a minimum of 1 hour to the created activity code, generate Form 5344, and "Submit to IMS". The Form 5344 does not need to be printed or included in the **paper** case closing file. Both the electronic IMS file and the paper case file must contain documentation to support the no liability determination. The electronic IMS file serves as the historical record for all examiner actions, findings, and determinations and is essential as background if the same case were to be identified/classified at a later date.

It is critical that the Form 5351 be placed in the **Closing Data** folder located under the EX-080 issue in IMS. Since the case is a DC 36 closure, CCP will be looking for the DC 36 case Form 5351 in the **Closing Data** folder.

Case File Assembly Procedures

At a minimum, the paper case file will consist of the following:

- Copy of the BMFOLT for the periods involved which show the TC 150 posting
- Form 5351
- Letter 930 (two copies) and an addressed envelope with current taxpayer address
- Form 3198
- Supporting documentation explaining the reasons for the non-examined closure such as Form 9984, *Examining Officer's Activity Record*, and any lead sheet or workpapers
- Form 3210

Note: No RAR will be issued to the taxpayer

When closing the DC 36 case from the field, the group secretary or designated group case closing official will update ERCS to Status 51 and submit the case file for closure to CCP. See IRM 4.10.2.5.2 for more information regarding these procedures.

The above guidance will be included in IRM 4.24.6.9.1, and IRM 4.24.10.5.7.2, No Change Report-Non-Filed Return, before the expiration date of this memo.

If you have any questions, please contact Kellie McCann, Excise Policy Manager, or Chris Steadham, Senior Excise Tax Program Analyst.

Cc: www.irs.gov