

IRM PROCEDURAL UPDATE

DATE: 01/30/2015

NUMBER: WI-21-0115-0227

SUBJECT: New Subsection Adding Procedures for Frozen 1042-S Credits, Revising Streamline Procedures

AFFECTED IRM(s)/SUBSECTION(s): 21.8.1

CHANGE(s):

IRM 21.8.1.11.14.1 Revised the if/then box for clarity.

1. If tax is withheld at source, the withholding agent **MUST** issue a Form 1042-S to the recipient. Use the following chart to handle claims for tax withheld at source.

If...	Then...
A nonresident alien had tax withheld by a withholding agent who reported this credit on Form 1042	The recipient can only recover this withholding by filing an income tax return.
The taxpayer files a claim on Form 843 for tax erroneously withheld	Return the claim to the taxpayer. Advise the taxpayer that the Form 1120-F or 1040NR must be filed with Form 1042-S attached, even if a return is not normally required.
The taxpayer files an amended return	Process as a normal duplicate filing case, <ol style="list-style-type: none">1. Verify that the income on Form 1042-S is reported (use CFOL commands or request return, if necessary). <p>NOTE: When the income was not considered, adjust the account accordingly.</p> <ol style="list-style-type: none">2. Research command code IRPTR to verify the same information on the Form 1042-S is reported in IRPTR.3. Research the EIN of the Withholding Agent to ensure Form 1042 (MFT 12) has been filed to report and pay at least the amount of the credit claimed on the Form

	<p>1042-S.</p> <p>NOTE: If the withholding agent has not submitted the proper Form 1042, <i>Annual Withholding Tax Return for U.S. Source Income of Foreign Persons</i>, and paid at least the amount of the credit being claimed on Form 1042-S, no consider the claim.</p>
<p>The taxpayer files an amended return claiming that the amount withheld on Form 1042-S was incorrect</p>	<p>Return the claim to the taxpayer. Advise the taxpayer to resubmit the amended return with a copy of the corrected Form 1042-S.</p> <p>#</p>  <p>#</p>
<p>The taxpayer files an amended return with a corrected Form 1042-S.</p>	<ol style="list-style-type: none"> 1. Research command code IRPTR to verify the same information on the Form 1042-S is reported in IRPTR. 2. Research the EIN of the Withholding Agent to ensure Form 1042 has been filed to report and pay at least the amount of the credit claimed. <p>NOTE: If withholding agent has not submitted the proper Form 1042, and paid at least the amount on Form 1042-S, no consider the claim.</p> <p>When verified, allow the credit with transaction code 766. Input a TC 29X with a Reference Code</p>

	<p>330 for the amount of the credit to generate the TC 766. Use Reason Code 051 (Total Federal Income Tax Withheld) on the CC ADJ54 adjustment.</p> <p>#</p>  <p>#</p> <p>REMINDER: Use of the reference code 330 will cause Master File to use the 180- day interest free calculation on the amount of the Chapter 3 withholding credit.</p>
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REMINDER: If this adjustment results in a refund to a nonresident alien that includes interest, See IRM 21.8.1.14.

IRM 21.8.1.27.1.1 Replaced requirement to send CIS case numbers to LB&I with send TIN numbers to LB&I.

1. Filers from outside the United States will submit a package to a specific mailbox in Submission Processing in Austin. The filing package will contain:
 - o Complete delinquent tax returns, together with the required information returns (Forms 3520, 3520-A, 5471, 5472, 8938, 926, or 8621) for each of the most recent three years for which the U.S. tax return due date, including extensions is past or
 - o If a U.S. tax return has been filed previously, filers will submit a package containing amended tax returns using Form 1040X, *Amended U.S. Individual Income Tax Return*, together with the required information returns (Forms 3520, 3520-A, 5471, 5472, 8938, 926, or 8621) for each of the most recent three years for which the U.S. tax return due date, including extensions is past.

2. For both delinquent originals and 1040X submissions, filers are instructed to write at the top of the first page of each return, and each information return, "Streamlined Foreign Offshore".
3. For both delinquent originals and 1040X submissions, filers must submit a signed certification statement certifying:
 - o The taxpayer or taxpayers are eligible for the SFO program
 - o The tax years and amounts owed for each year (including interest) and make payment for those amounts due
 - o The taxpayer has filed all appropriate FBAR's
 - o The specific reasons for failure to report all income, pay all tax, and submit all required information returns including FBAR's
4. Submission Processing (SP) in Austin will review the packages that contain both original and amended returns. SP will ensure the necessary certifications are attached and complete. If they are incomplete SP will correspond with the taxpayer to perfect the submissions. SP will attach an "AM Streamline Coversheet" to cases they have corresponded with the taxpayer on and notate the response, e.g. "Response Received and Attached" or "No Reply". Submission Processing will not review packages that contain only amended returns. Paragraph 9 below provides detailed information on corresponding in order to perfect streamline packages.
5. LB&I will review the submissions for statute considerations. LB&I will complete the "AM Streamline Coversheet" and attach it to the package notating their statute recommendations regarding open statutes and statute extensions.
6. Delinquent original returns will be processed in SP.
7. Form 1040X cases will be scanned to CIS for Accounts Management processing and assigned to a designated IDRS number for subsequent assignment to CSRs.
8. One CSR must work all related cases.
9. Use the table below to determine if the required certification is complete:

NOTE: If the taxpayer completes the certification for only one or two tax years, and submits the same number of original and/or amended returns, do not question whether additional years should have been submitted. As long as the tax years listed on the certification are filed (whether original or amended), accept that the number is correct.

If	Then
<p>The certification is attached, and:</p> <ol style="list-style-type: none"> 1. The amounts owed for each tax year, including interest, are calculated, and 2. The amounts owed, including interest, have been paid, and 3. The amounts paid 	<p>The certification is complete. Follow the instructions in Paragraph 10 below.</p>

<p>equal the taxpayer's calculations, and</p> <p>4. The taxpayer has completed the section stating the specific reasons for failure to report all income, pay all tax, and submit all required information returns,</p> <p style="text-align: center;">#</p> <div style="background-color: black; width: 100px; height: 40px; margin: 0 auto;"></div> <p style="text-align: center;">#, and</p> <p>5. The taxpayer(s) have signed the certification under penalties of perjury</p>	
<p>Submission Processing has previously corresponded with the taxpayer for missing/incomplete information and received the necessary information, per the AM Streamline Worksheet</p>	<p>The certification is complete. Follow the instructions in Paragraph 10 below.</p>
<p>Submission Processing has previously corresponded with the taxpayer for missing/information and received no reply, per the AM Streamline Worksheet</p>	<p>Do not correspond a second time. Follow the instructions in the row below (no reply), beginning with the second bullet.</p>
<p>There is no certification attached or, the certification is attached but:</p> <ol style="list-style-type: none"> 1. The amounts owed for each tax year, including interest, are not calculated, or 2. The amounts owed, including interest, are 	<p>Call or correspond with the taxpayer. If corresponding, issue 178C, using the appropriate paragraph(s) to address the specific items missing from the certification. Suspend the case for 40 days.</p> <ul style="list-style-type: none"> o If the taxpayer responds with the necessary information, securely e-mail the TIN to a designated mailbox: "*LB&I

<p>not paid or,</p> <p>3. The amounts paid do not equal the taxpayers calculations or,</p> <p>4. The taxpayer does not complete the section stating the specific reasons for failure to report all income, pay all tax, and submit all required information returns, including FBAR's, or</p> <p>5. The taxpayer does not sign the certification under penalties of perjury</p>	<p>OVDP Compliance" with an explanation the case is being sent post assessment and is a Certification Reply. Enter CIS case notes saying referred to LB&I as a "Certification Reply". Then follow paragraph 10 below.</p> <ul style="list-style-type: none"> ○ If the taxpayer does not respond, treat the case like a normal 1040X case. Do not restrict the failure to file or failure to pay penalties and do not input TC 971 with Action Code(AC) 178. <p>NOTE: The 178C letter includes language advising the taxpayer if they do not respond, the case(s) will be closed using normal procedures, so no closing letter is necessary for "No Reply" cases.</p> <ul style="list-style-type: none"> ○ After making the assessment on no response cases, securely e-mail the TIN to a designated mailbox: "*LB&I OVDP Compliance" with an explanation the case is being sent post assessment and is a "No Reply." Enter CIS notes indicating the case was referred to *LB&I OVDP Compliance due to "No Reply".
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10. Accounts Management will perform the following actions prior to adjusting accounts under the SFC:
- Review the account for a -Z freeze. If there is a -Z freeze on the account, contact CI to determine whether an amended return filed using the Streamlined Foreign Offshore Compliance Procedures can be processed. Follow CI's direction. See -Z freeze instructions at IRM 21.5.6.4.52 -Z Freeze.
 - Review each tax year for statute consideration. Refer to Statutes for clearance or assessment when necessary. See IRM 25.6 *Statute of Limitations*.

- Review Command Code AMDIS for examination involvement. Follow the table below if any of the affected accounts are found on Command Code AMDIS.

If	Then
All affected tax years are in AMDIS status less than 12	<p>Process all related amended returns as Streamline. Follow paragraph 11 below.</p> <p>NOTE: Forward the case to Exam, based on the AIMS data (after processing as Streamlined) when AMDIS status is 09 or greater and less than 90.</p>
Any tax year is in AMDIS status 12 or greater	<ul style="list-style-type: none"> ○ Process all related amended returns as <u>normal</u> 1040X adjustments. Do not restrict penalties. Do not input TC 971 AC 178. Allow the adjustment notice(s) to generate. ○ Send Letter 916C with the following language using two open paragraph(s): "Our records show that the IRS already has an open examination for one or more of the years covered by your submission. For this reason, you are not eligible for the penalty relief provided under the Streamlined Procedures." "You should contact the examiner assigned to your pending examination to discuss the applicability of penalties and any defenses you may have for the years covered by your submission." ○ Notate CIS case notes, "Streamline case worked as normal due to open examination." ○ Forward the case to Exam, per the AIMS data, after processing.

11. To complete adjustments on Form 1040X filed under the SFC:

1. Input a Transaction Code (TC) 971 Action Code (AC) 178, using the amended return received date as the transaction date, to each affected tax year. TC 971 AC 178 denotes Streamlined Filing Compliance. The xClaim tool has been programmed to allow AC 178.
2. Ensure the payments are allocated correctly among the affected tax years according to the calculations made on the taxpayer certification. If not, follow normal credit transfer procedures using appropriate credit freeze codes to ensure no erroneous refunds occur.
3. Use all normal adjustment procedures, including the use of IAT tools, when making the tax assessment to each tax year, with the following

exception: Restrict the failure to file and failure to pay penalties on each tax year by inputting TC 160 and TC 270 for zero dollars.

NOTE: If any payments were transferred, use appropriate posting delay codes on the adjustment(s) to ensure the adjustment does not post before the payments are posted correctly

4. Allow the adjustment notice to generate. Do not correspond with the taxpayer(s) because they are advised on IRS.gov that they may receive a balance due notice or a refund if the tax or interest is not calculated correctly.)

5. # [REDACTED]

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IRM 21.8.1.27.2.1 Replaced requirement to send CIS case numbers to LB&I with send TIN numbers to LB&I.

1. Filers from within the United States will submit a package to a specific mailbox in Submission Processing in Austin. The filing package containing complete and accurate amended returns using Form 1040X , *Amended U.S. Individual Income Tax Return* for each of the most recent 3 years for which the U.S. tax return due date (or properly applied for extended due date) has passed together with any required information returns (e.g., Forms 3520, 3520-A, 5471, 5472, 8938, 926, and 8621) even if these information returns would normally not be submitted with the Form 1040 had the taxpayer filed a complete and accurate original return. Taxpayers may NOT file delinquent original returns under these procedures.

NOTE: Filers are instructed to write, "Streamlined Domestic Offshore" in red at the top of the first page of each amended return.

2. In addition to the 1040X returns, domestic streamline filers must also submit a statement on the *Certification by U.S. Person Residing in the United States for Streamlined Domestic Offshore Procedures* attesting:
 - o The taxpayer or taxpayers are eligible for the SDO procedures
 - o The tax years and amounts owed for each year including interest (payment must be made).
 - o All required FBARs have now been filed
 - o The failure to report all income, pay all tax, and submit all required information returns, including FBARs, resulted from non-willful conduct

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- o The miscellaneous offshore penalty amount is accurate.
3. LB&I will review the submissions for statute considerations. LB&I will complete the "AM Streamline Coversheet" and attach it to the package notating their statute recommendations regarding open statutes and statute extensions.
 4. Form 1040X cases will be scanned into CIS for Accounts Management processing and assigned to a designated IDRS number for subsequent assignment to CSR's.
 5. One CSR must work all related cases.
 6. Accounts Management will be responsible for reviewing the packages to ensure the necessary certifications are attached and complete. If they are incomplete AM will correspond with the taxpayer to perfect the submissions.
 7. Use the table below to determine if the required certification is complete:

NOTE: If the taxpayer completes the certification for only one or two tax years, and submits the same number of amended returns, do not question whether additional years should have been submitted. As long as the tax years listed on the certification are filed, accept that the number is correct.

If	Then
<p>The certification is attached, and:</p> <p>1. The amounts owed for each tax year, including interest, are calculated, and</p> <p>2. The amounts owed,</p>	<p>The certification is complete. Follow the instructions in Paragraph 8 below.</p>

<p>including interest have been paid, and</p> <p>3. The amounts paid equal the taxpayer's calculations, and</p> <p>4. The taxpayer has completed the section stating the specific reasons for failure to report all income, pay all tax, and submit all required information returns,</p> <p>#</p> <p>[REDACTED]</p> <p># , and</p> <p>5. The miscellaneous offshore penalty is calculated and paid</p> <p>#</p> <p>[REDACTED]</p> <p>#</p> <p>6. The taxpayer(s) have signed the certification under penalties of perjury</p>	
<p>There is no certification attached or, the certification is attached but:</p> <p>1. The amounts owed for each tax year, including interest, are</p>	<p>Call or correspond with the taxpayer. If corresponding, issue 178C, using the appropriate paragraph(s) to address the specific items missing from the certification. Suspend the case for 40 days.</p>

<p>not calculated, or</p> <ol style="list-style-type: none"> 2. The amounts owed, including interest, are not paid or, 3. The amounts paid do not equal the taxpayers calculations or, 4. The taxpayer does not complete the section stating the specific reasons for failure to report all income, pay all tax, and submit all required information returns, including FBAR's, or 5. The taxpayer does not calculate and or pay the miscellaneous offshore penalty, or 6. The taxpayer does not sign the certification under penalties of perjury 	<ul style="list-style-type: none"> ○ If the taxpayer responds with the necessary information, securely e-mail the TIN to a designated mailbox: "*LB&I OVDP Compliance" with an explanation the case is being sent post assessment and is a Certification Reply. Enter CIS case notes saying referred to LB&I as a "Certification Reply". Then follow paragraph 8 below. ○ If the taxpayer does not respond, treat the case like a normal 1040X case. Do not restrict the failure to file or failure to pay penalties and do not input TC 971 with Action Code(AC) 178. <p>NOTE: The 178C letter includes language advising the taxpayer if they do not respond, the case(s) will be closed using normal procedures, so no closing letter is necessary for "No Reply" cases.</p> <ul style="list-style-type: none"> ○ After making the assessment on no response cases, securely e-mail the TIN to a designated mailbox: "*LB&I OVDP Compliance" with an explanation the case is being sent post assessment and is a "No Reply." Enter CIS notes indicating the case was referred to *LB&I OVDP Compliance "No Reply".
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8. Accounts Management will perform the following actions prior to adjusting accounts under the SDO:
 - Review the account for a -Z freeze. If there is a -Z freeze on the account, contact CI to determine whether an amended return filed using the Streamlined Foreign Domestic Compliance Procedures can be processed. Follow CI's direction. See -Z freeze instructions at IRM 21.5.6.4.52 -Z Freeze.

- Review each tax year for statute consideration. Refer to Statutes for clearance or assessment when necessary. See IRM 25.6 *Statute of Limitations*.
- Review Command Code AMDIS for examination involvement. Follow the table below if any of the affected accounts are found on Command Code AMDIS.

If	Then
All affected tax years are in AMDIS Status less than 12	<p>Process all related amended returns as streamline. Follow paragraph 9 below</p> <p>NOTE: Forward the case to Exam, based on the AIMS data (after processing as Streamlined) when AMDIS status is 09 or greater and less than 90.</p>
Any affected tax year is in AMDIS status 12 or greater	<ul style="list-style-type: none"> ○ Process all related amended returns as <u>normal</u> 1040X adjustments. Do not restrict penalties. Do not input TC 971 AC 178. Allow the adjustment notice(s) to generate. ○ Send Letter 916C with the following language using two open paragraph(s): "Our records show that the IRS already has an open examination for one or more of the years covered by your submission. For this reason, you are not eligible for the penalty relief provided under the Streamlined Procedures." "You should contact the examiner assigned to your pending examination to discuss the applicability of penalties and any defenses you may have for the years covered by your submission." ○ Notate CIS case notes, "Streamline case worked as normal due to open examination." ○ Forward the case to Exam, per the AIMS data, after processing.

9. To complete adjustments on Form 1040X filed under the SDO:

1. Input a Transaction Code (TC) 971 Action Code (AC) 178, using the amended return received date as the transaction date, to each affected tax year. TC 971 AC 178 denotes Streamlined Filing Compliance. The xClaim tool has been programmed to allow AC 178.
2. Ensure the payments are allocated correctly among the affected tax years (including the MFT 55 civil penalty module) according to the calculations made on the taxpayer certification. If not, follow normal credit transfer procedures using appropriate credit freeze codes to ensure no erroneous refunds occur.

3. Use all normal adjustment procedures, including the use of IAT tools, when making the tax assessment to each tax year, with the following exception: Restrict the failure to file and failure to pay penalties on each tax year by inputting TC 160 and TC 270 for zero dollars.

NOTE: If any payments were transferred, use appropriate posting delay codes on the adjustment(s) to ensure the adjustment does not post before the payments are posted correctly

4. Assess the 5 percent miscellaneous penalty on MFT 55 based on the taxpayers calculation. Input TC 240 with blocking series 52 and penalty reason code 708
5. Allow the adjustment notices to generate. Do not correspond with the taxpayer(s) because they are advised on IRS.gov that they may receive a balance due notice or a refund if the tax or interest is not calculated correctly.

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[Redacted]

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6. # [Redacted]

[Redacted]

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