



# MANUAL TRANSMITTAL

Department of the Treasury  
Internal Revenue Service

8.7.16

OCTOBER 1, 2015

## EFFECTIVE DATE

(10-01-2015)

## PURPOSE

- (1) This transmits IRM 8.7.16, *Technical and Procedural Guidelines, Appeals Employment Tax Procedures*.

## MATERIAL CHANGES

- (1) Updated references and made editorial changes (including grammar, spelling, and minor clarification) throughout the IRM.
- (2) The changes are listed in the table below:

IRM Reference	Description of Change
IRM 8.7.16.1	Removed <b>LB&amp;I</b> from paragraph (1) as a source of employment tax cases. In paragraph (3), clarified definition of Section 530 relief. Added paragraph (5) regarding household workers, Section 530 relief, and IRC Section 7436.
IRM 8.7.16.2	Revised wording in the chart and (2) for clarification.
IRM 8.7.16.3	Revised wording.
IRM 8.7.16.4	Updated reference and revised language to correspond with language in the Appeals Judicial Approach and Culture (AJAC) Phase 2. Added Letter 950-L and 950-M to (2)(i) which are currently used by EO Exam.
IRM 8.7.16.4.2	Revised wording in (2), (5), and (6) for clarification. Added to (6) information on Form 8919, <b>Uncollected Social Security and Medicare Tax on Wages</b> and Form 8959, <b>Additional Medicare Tax</b> .
IRM 8.7.16.5	Revised wording to clarify (2)a) examples of <b>worker classification issues</b> . Revised the wording in (3)e) regarding evidence to support amounts available for abatement.
IRM 8.7.16.5.2	Changed title from <b>Burden of Proof</b> to <b>Burden of Proof for Section 530 Relief</b> , and corrected citation in (1) for Section 530 relief. Changed the term “safe havens” to “safe harbors” in (2).

IRM Reference	Description of Change
IRM 8.7.16.5.3	Deleted paragraph (1). Revised paragraph (2) for clarification and renumbered as paragraph (1).
IRM 8.7.16.6	Revised wording of (2) for clarification. Revised language in (3) to correspond with language in the interim guidance on Appeals Judicial Approach and Culture (AJAC).
IRM 8.7.16.7.1	Revised for clarification.
IRM 8.7.16.7.2	Replaced “Employment” with “Examination” in heading.
IRM 8.7.16.7.4	Made minor changes regarding Form 4668-B.
IRM 8.7.16.8	Revised wording for clarification.
IRM 8.7.16.9	Revised (f) for Reference Numbers to adjust Additional Medicare Tax.
IRM 8.7.16.10	Revised paragraph (3) for clarity. In paragraph (4), combined (b) and (c) about the use of Form 4668.
IRM 8.7.16.11	Revised (1) to add: An employer must file an annual Form 944 instead of filing quarterly Forms 941 only if the IRS notified the employer in writing. Moved paragraph (2) as a <b>Note</b> under paragraph (1). Renumbered paragraph (3) as paragraph (2).
IRM 8.7.16.13	Revised paragraph (1) for clarification and eliminated bullets.
IRM 8.7.16.14	Revised (2)(a) & (b) for clarification .
IRM 8.7.16.15	Revised to add reference to IRC 3102(f)(3). Revised to clarify by adding a note after (b): Note: This provision is applicable when the adjustment does not qualify for an interest free adjustment under IRC 6205. Revised the wording of (c) for clarification. Revised (3) to include Form CT-1. Revised wording of (4) for clarification.
IRM 8.7.16.16	In 1(a), changed “individual contractor” to “independent contractor”. Revised note in (1)(c) to remove out of date information. Revised wording of (2) & (5) for clarification.

IRM Reference	Description of Change
IRM 8.7.16.17	Revised for clarification.
IRM 8.7.16.17.1	Deleted paragraph (3) and included in paragraph (2) a reference to IRM 8.20.5 for SFR card-in procedures.
IRM 8.7.16.17.1.1	Revised to add Form 2504-S, and revised first sentence of (1).
IRM 8.7.16.7.2	Removed IRM 8.7.16.17.2, <b>Employment Tax Returns Executed Under IRC Section 6020(b) (No Returns Filed)</b> , since it isn't necessary.
IRM 8.7.16.18	Revised (2) to clarify the taxpayer may be entitled relief. Added IRC 3102(f)(3).
IRM 8.7.16.19	Revised paragraph (2) to change <b>Compliance Examination/Collection</b> to <b>Compliance</b> and to remove <b>LB&amp;I</b> as a source of employment tax cases. In paragraph (3), added meaning of <b>CSP</b> and IRM reference. Revised paragraph (4) for clarification.
IRM 8.7.16.20	Removed references to "Division Counsel" and retained only the references to "Associate Chief Counsel (CC:TEGE)" with the responsibility for all coordination procedures between National Office and the General Counsel of the Social Security Administration.
IRM 8.7.16.21	Revised wording in (4) to clarify that FUTA is still assessed at 100%.
IRM 8.7.16.23	Revised (2) for clarification. Corrected citation in (3) & (6). Added Form 2504-S to (4). Added (7) to remind ATE to include instructions to APS if an interest-free adjustment is applicable.
IRM 8.7.16.24 (3)	Added reference to IRM 4.23.2.10, Coordination with Social Security Administration.
IRM 8.7.16.25	Revised wording for clarification - deleted (3) & (4).
IRM 8.7.16.25.1	Moved paragraph (2) as a <b>Note</b> under paragraph (1). As a result, the remaining paragraphs were renumbered.

IRM Reference	Description of Change
IRM 8.7.16.25.1.1	Revised to clarify instruction; the use of social security numbers for identification of workers is <b>not allowed</b> on a NDWC. Revised (3)(b) to clarify that it is not necessary to include an attachment to the Notice of Determination. Added to (4)b Additional Medicare Tax to type of employment tax shown on the table.
IRM 8.7.16.25.1.2	Added information about Form 2504-AD with selectable paragraph. Changed heading from <b>Waiver Form 2504-WC</b> to <b>Waiver Form 2504-WC or Form 2504-AD</b> .
IRM 8.7.16.25.3	Updated references and added <b>Form 4666</b> to the list in (1)(a) for worker classification and section 530 issues.
IRM 8.7.16.26	Revised paragraph (4) for clarification.
IRM 8.7.16.26.1	Revised for clarification and removed paragraphs (8) through (10) about ACMs since this information is contained in IRM 8.6.2.
IRM 8.7.16.26.2	Revised paragraph (2) for clarification.
IRM 8.7.16.26.2.2	In paragraph (1), deleted explanation about the ACM.
Exhibit 8.7.16-1	In remarks section of Form 3610, replaced the word <b>deficiency</b> with <b>amount</b> . Also, replaced the word <b>year</b> with <b>Tax Period Ended</b> .
Exhibit 8.7.16-2	Revised exhibit and graphic description to reflect that the bottom portion of Form 885-T does not have to be completed.

## EFFECT ON OTHER DOCUMENTS

This IRM supersedes the information in IRM 8.7.16, *Technical and Procedural Guidelines, Appeals Employment Tax Procedures*, dated October 29, 2013.

## AUDIENCE

All Appeals employees working employment tax cases.

John V. Cardone  
Director, Policy, Quality and Case Support

8.7.16

Appeals Employment Tax Procedures

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## 8.7.16.1

(10-01-2015)

### **Introduction to Employment Tax Cases in Appeals**

- (1) This section discusses Appeals procedures for receipt, analysis, reports and closing of an employment tax case. Generally, employment tax cases come from SB/SE or TE/GE. Both functions use the same forms and report writing procedures.
- (2) Most of the cases received in Appeals involve employee/independent contractor issues; however, the entire range of employment tax issues can be worked. Appeals can receive cases involving fringe benefit issues, allocated tip income issues, withholding on certain gambling winnings, backup withholding requirements, etc. See IRM 4.23, *Employment Tax*, for multifunctional employment tax procedures.
- (3) Section 530 of the Revenue Act of 1978, as amended, provides relief from federal employment tax liability if certain requirements are met. The applicability of Section 530 may be an issue in many employment tax cases. See also Rev. Proc. 85-18, 1985-1 C.B. 518; Notice 2002-5, 2002-3 IRB 320; and IRM 4.23.5, *Employment Tax - Technical Guidelines for Employment Tax Issues*.
- (4) Appeals has jurisdiction over the following employment tax cases:
  - a. Chapter 21 - Federal Insurance Contributions Act (FICA);
  - b. Chapter 22 - Railroad Retirement Tax Act (RRTA);
  - c. Chapter 23 - Federal Unemployment Tax Act (FUTA);
  - d. Chapter 23A - Railroad Unemployment Repayment Tax (RURT); not applicable after 7/1/93; and
  - e. Chapter 24 - Income Tax Withheld
- (5) If the taxpayer does not file Schedule H, *Household Employment Taxes*, and instead takes the position that the household worker is not an employee and/or that the taxpayer is entitled to employment tax relief under Section 530, the IRC 7436 procedures apply.

## 8.7.16.2

(10-01-2015)

### **Employment Tax Return Forms and Due Dates**

- (1) Returns filed for employment taxes and their due dates are as follows:

Tax	Tax Return Form No.	Period Covered	Due date of Return
a) FUTA	Form 940	Calendar Year	January 31 of following year
b) FICA	Form 941	Calendar Quarter	Last day of month following end of quarter
c) Income Tax Withheld	Form 941	Calendar Quarter	Last day of month following end of quarter
d) FICA and Income Tax Withheld for Agricultural Employers	Form 943	Calendar Year	January 31 of following year
e) FICA and Income Tax Withheld for Small Employers	Form 944	Calendar Year	January 31 of following year
f) Income Tax Withheld from Non-Payroll Payments	Form 945	Calendar Year	January 31 of following year
g) RRTA	Form CT-1	Calendar Year	February 28 of following year
h) RRTA	Form CT-2	Calendar Quarter	Last day of second month following end of quarter

- (2) Individual taxpayers must report federal employment taxes for household employees on Schedule H, **Household Employment Taxes**, attached to the following: Form 1040, **U. S. Individual Income Tax Return**, Form 1040NR, **U. S. Nonresident Alien Income Tax Return**, Form 1040-SS, **U. S. Self-Employment Tax Return**, or Form 1041, **U. S. Income Tax Return for Estates and Trusts**.

8.7.16.3  
(10-01-2015)  
**Account and Processing Support (APS) Receipt of an Employment Tax Case**

- (1) See IRM 8.20.5, *Account and Processing Support (APS), Carding New Receipts*, for procedures on establishing cases on Appeals Centralized Database System (ACDS).
- (2) The Appeals Technical Employee (ATE) will verify the case was carded-in on ACDS following the same procedures used when a regular income tax case is received except for the following:
- TYPE = EMPL

8.7.16.4  
(10-01-2015)  
**Appeals Technical Employee (ATE) Receipt of Newly Assigned Case**

- (1) Follow the procedures detailed in, IRM 8.2.1.4, *Receipt of New Assignment*, to perform a preliminary review of the case file.
- (2) Review the case file upon receipt to ensure the following documents are included with the file:
- a. Tax returns, including statute extensions;
  - b. Power of Attorney, if applicable;
  - c. Examination report, including Form 4665, *Report Transmittal* Form 4666, **Summary of Employment Tax Examination**



Form 4667, **Examination Changes - Federal Unemployment Tax**  
Form 4668, **Employment Tax Examination Changes Report**, and  
Form 886-A, **Explanation of Items**;

- d. Taxpayer's protest;
  - e. Form 4318-A, *Continuation Sheet for Form 4318, Examination Workpapers Index*;
  - f. Form 5503, *Case History Worksheet*;
  - g. Form 4564, *Information Document Request(s)*;
  - h. Examination Workpapers, and,
  - i. Letter 950-D, *Employment Tax 30-Day Letter* or Letter 950-M, *Employment Tax 30-Day Letter* is used for employment tax cases involving issues other than worker classification. Letter 950-C, *Employment Tax 30-Day Letter-WC* or Letter 950-L, *Employment Tax 30-Day Letter-WC* is used in employment tax cases involving worker classification issues.
- (3) Tax returns may be original or copies, but make sure there is a return for each tax period covered by the examination report. Cases with return copies must have transcripts attached verifying the copies are accurate.

8.7.16.4.1  
(10-01-2012)  
**When are a Taxpayer's  
Protest and Examiner's  
Rebuttal Needed**

- (1) The proposed employment tax adjustment must be presented to the taxpayer to receive formal consideration in Appeals. The type of protest and the detail contained therein varies depending on the total tax and penalties proposed. The same rules used in income tax cases apply to the type of protest required for employment tax cases.
- (2) If the proposed increase or decrease in tax (including penalties) is more than \$25,000 per tax period, or the case is one of a few specific types (including all employee plan and exempt organization cases), a formal written protest is required. See Publication 5 for the requirements of a formal protest.
- (3) If the protested liability is not more than \$25,000 for each tax period at issue, the only thing required is a written letter, requesting Appeals consideration and indicating the issues and reasons for disagreement. This is considered a "small case request." See Publication 3498.
- (4) When a formal, written protest is required, the examiner provides a separate, written rebuttal to the protest submitted by the taxpayer. This rebuttal serves to supplement the information contained in the Revenue Agent's Report (RAR) and resolve any factual differences between the RAR and the protest. It also provides constructive responses to the taxpayer's written arguments.

**Note:** Provide the taxpayer a copy of this rebuttal.

8.7.16.4.2  
(10-01-2015)  
**Verifying the Statutory  
Period of Limitations**

- (1) Within five (5) workdays from receipt of the case, the ATE must review the file to determine all statute dates are correctly shown on ACDS. This review includes verification of the original statute, as well as validation of all extensions. Make an entry on the case activity record to indicate the statute date was verified. If you determine the statute date reflected on ACDS is not correct and changes are necessary, you must update the statute critical data fields using the Statute Validation System (SVS). See IRM 8.21.3.1.1.1, *Procedures to Update Statutes on ACDS*.
- (2) The statutory period of limitations on assessment of FICA and income tax withholding is three years from the later of (1) April 15 of the year following the year in which the return was filed, or (2) the date return was filed. For RRTA

and FUTA taxes, the statutory period is three years from due date of return or the date the return was filed, whichever is later. If no return was filed, the statute remains open for the assessment of these taxes.

- (3) Form SS-10, *Consent to Extend the Time to Assess Employment Taxes*, must be used to extend the period for assessment of taxes imposed by FICA, including FICA tax on tip income (for exceptions, see IRM 25.6.22.6.10, *Employment Taxes*), FUTA, RRTA, and Code provisions relating to withholding of income tax on wages at the source.

**Note:** Docketed cases involving worker classification issues may have two statutes, the FICA statute date and a statute date for the self-employment tax.

- (4) When a parent in a consolidated income tax return executes Form 872, Form 872-A, Form 872-I, or Form 872-IA covering Chapter 1 Income Taxes, the authority of the parent does not automatically extend to taxes outside Chapter 1 Income Taxes such as excise taxes and employment taxes.
- (5) For elections by religious orders for social security and Medicare coverage, see IRC 3121(r).
- (6) Form 1040, *U.S. Individual Income Tax Return* is a multi-purpose tax return reporting both income and FICA taxes (i.e., Social security tax, Medicare tax, and Additional Medicare Tax). If the employee filed Form 1040, but did not report any FICA taxes on the return and:
- Attach Form 4137, *Social Security and Medicare Tax on Unreported Tip Income*,
  - Attach Form 8919, *Uncollected Social Security and Medicare Tax on Wages*, or
  - Attach Form 8959, *Additional Medicare Tax*, the period of limitations for FICA taxes does not begin to run. FICA taxes may be assessed even if the statute of limitations has expired for the assessment of income taxes. See Rev. Rul. 79-39, 1979-1 C.B. 435. See also IRM 25.6.22.6.10.2, *FICA Tax on Tips Not Reported to Employer*.
- (7) See IRM 8.21, *Appeals Statute Responsibility*, and IRM 25.6.22, *Statute of Limitations - Extension of Assessment Statute of Limitations By Consent*, for detailed information concerning statute of limitations on employment tax cases, including employee share of FICA, FICA on tips and trust fund recovery penalty cases.

8.7.16.5  
(10-01-2015)  
**Settling an Employment  
Tax Case**

- (1) The ATE has the same responsibility in the settlement of an employment tax case as any other case. The settlement must be fair and impartial.
- (2) Employment tax issues considered by Appeals include the following:
- a. Worker classification issues [e.g. whether a worker is an independent contractor or employee (common law, statutory employee, corporate officer, or section 218 employee); or whether a worker is a statutory non-employee];
  - b. Liability issues (e.g. whether Section 530 applies; whether IRC 3509 rates apply; whether the taxpayer is entitled to an interest-free adjustment under IRC 6205);
  - c. Other issues such as whether certain payments are excepted from the definition of "wages" (e.g. a fringe benefit is excludable from the employ-

ee's gross income under IRC 132) or whether certain services are excepted from the definition of "employment."

(3) A non-exclusive list of settlement options include:

- a. A "modified" Classification Settlement Program (CSP) settlement in reclassification cases with a concession of all or a greater portion of the proposed employment taxes than allowed in the "standard CSP settlements" used by Compliance. This includes a concession of the liability for tax in the intervening years in consideration of a Closing Agreement for future compliance. Detailed information pertaining to CSP is covered in a subsequent subsection. See IRM 8.7.16.21, *Classification Settlement Program (CSP)*.
- b. A change from full rates to IRC 3509 rates in reclassification cases based on the difficulty of proving intentional disregard of the law and regulations.
- c. The availability of interest-free provisions of IRC 6205, if the case is closed on an "agreed" basis. It is important to emphasize that execution of the Form 2504, Form 2504-S, Form 2504-WC or Form 2504-AD is necessary for these provisions to apply.
- d. Allow additional credit against the FUTA if the taxpayer files corrected reports with the State and pays the additional State unemployment taxes due. See IRC 3302(b).
- e. The abatement of all or a portion of the "Federal Income Tax" that the employer failed to deduct and withhold or the "Backup Withholding" that the payor failed to deduct and withhold by evidence that the worker reported and paid the income tax due on his own return. See IRC 3402(d). The abatement of all or a portion of the Additional Medicare Tax (AdMT) by evidence that the worker reported and paid the AdMT due on his own return. See IRC 3102(f)(3).

**Caution:** The evidence under review should be Form 4669, *Statement of Payments Received*, and Form 4670, *Request for Relief from Payment of Income Tax Withholding*, provided by the taxpayer. Do not attempt to ascertain whether the worker has properly included the income on his or her return(s) for purposes of determining the taxpayer/employer's liability. Allowing or disallowing an abatement based upon IDRS research could cause a possible disclosure violation because it could disclose to the taxpayer/employer that the workers did not report the income, which would be a disclosure violation.

- f. Allow a recomputation of the Federal Income Tax due on wages based on information showing a more accurate effective income tax rate for some or all of the employees involved.
- g. A concession of proposed penalties based on reasonable effort of the taxpayer to comply with the employment tax rules.

#### 8.7.16.5.1 (10-01-2012) Hazards of Litigation

- (1) The hazards of litigation must be weighed in light of the facts, degree of case and issue development, pertinent law, and the established position of the Service. If hazards exist, consider a number of settlement options, depending on the type of case and degree of hazards present. Hazards of litigation generally fall into three categories: factual, evidentiary, or legal.
  - Factual hazards are uncertainty as to what facts the court would find as true.

- Evidentiary hazards include the admissibility or weight that would be given to a specific item of evidence.
- Legal hazards are how the court would interpret and apply the law.

8.7.16.5.2  
(10-01-2015)

**Burden of Proof for  
Section 530 Relief**

- (1) Section 530 of the Revenue Act of 1978, as amended, provides a special burden of proof rule for Section 530 relief. The business has the initial burden of proof in demonstrating it is entitled to relief under Section 530. Section 530(e)(4) shifts the burden of proof to the government, if the following two requirements are satisfied:
  - a. The taxpayer establishes a prima facie case that it was reasonable not to treat an individual as an employee; and
  - b. The taxpayer cooperates fully with reasonable requests from the examiner.
- (2) The shift applies to the “reporting consistency” requirement; the “substantive consistency” requirement; and the “three safe harbors” (judicial precedent, prior audit, and industry practice) contained in Section 530(a)(2). The shift does not apply in determining whether the taxpayer had any “other reasonable basis” for treating the worker as an independent contractor.

8.7.16.5.3  
(10-01-2015)

**ATE’s Determination of a  
Settlement Range**

- (1) See IRM 8.6.4.1, **Fair and Impartial Settlements per Appeals Mission**, for guidance on reaching settlement. In worker classification cases, the use of a settlement approach, where a “percentage of payments” is considered “employee wages” and the remaining payments considered “independent contractor payments” directly contradicts the philosophy of employment taxes. However, there are no specific restrictions against using a percentage type settlement.

**Caution:** “Settlement on a percentage basis” without a closing agreement to treat the workers as employees going forward can cause problems for both the IRS and the taxpayer regarding how to treat the workers in subsequent years. When possible, a closing agreement clarifying treatment of the workers in subsequent years should be entered into in conjunction with a settlement.

- (2) Consider the following factors when attempting to determine a “settlement range” for worker classification cases:
  - a. Type of work performed by worker;
  - b. Type of individuals performing the work;
  - c. Prevailing treatment of workers within the industry;
  - d. Common law standard and the quality of the underlying evidence (availability and credibility);
  - e. Current and past position of the Service with respect to type of worker and particular industry as well as potential impact of section 530;
  - f. History and trend of case law and the same, or similar, type of worker and industry.

**Note:** While the above list is not all inclusive, it can be used as a starting point in determining a **settlement range**.

- (3) Attempt to settle the case based strictly on the merits if the taxpayer is not willing to enter into a closing agreement with full future compliance. While a settlement does not “lock-in” a commitment from the taxpayer for future years,

an agreement to an assessment for the periods under consideration may prevent the taxpayer from receiving Section 530 relief (based on the “prior audit safe harbor” in subsequent periods).

- (4) The taxpayer either files or adjusts (if previously filed) employment tax returns for the intervening periods. Inform the taxpayer that Compliance will be notified of the settlement and may follow-up to confirm that returns with adjustments are filed. If the taxpayer has previously filed employment tax returns, consider the statute of limitations for such periods.

8.7.16.6  
(10-01-2015)  
**Contents of the Appeals  
Technical Employee’s  
Workpapers**

- (1) The workpapers must contain all the appropriate information and documentation to support and explain what occurred during the Appeals process.
- (2) In cases where the correct employment status of the workers is an issue, it is essential to have a detailed and complete description of the work relationship. Include a description of the following:
  - a. The work to be completed;
  - b. How the end result is to be accomplished; and
  - c. Who directs and controls the worker with respect to the work and results to be accomplished.
- (3) The same principles used when considering the “Section 530 relief” and “worker status” issues also apply to wage, employer, and employment issues.

8.7.16.7  
(10-01-2012)  
**Settlement  
Computations on  
Employment Tax Cases**

- (1) The following subsections cover the procedures to use when the settlement results in either an agreed or an unagreed employment tax case. The subsections cover the settlement computations that are prepared and the procedures that are needed to close the case.
- (2) Settlement computations for employment tax cases are prepared by the Tax Computation Specialist (TCS).

8.7.16.7.1  
(10-01-2015)  
**Face Sheet of  
Settlement  
Computations**

- (1) Use of a face sheet is recommended, but not required for employment tax cases. Either Form 4666, *Summary of Employment Tax Examination*, or Form 3610, *Audit Statement*, may be used as the face sheet for the settlement computation.
- (2) Form 4666 summarizes the FICA, income tax withholding, and FUTA adjustments.
  - a. Compliance’s Excel employment tax workbook includes Form 4666, available on the SB/SE website. A link to the workbook can be found by clicking on “Spreadsheets Sharepoint” on the *Appeals TCS website*, and then looking for the “Employment Tax - SBSE” folder.
  - b. See Exhibit 4.23.10–1, Form 4666 - Summary of Employment Tax Examination, for Form 4666 instructions.
- (3) If using a Form 3610 as a face sheet, identify the **Kind of Tax** or **Type of Tax**. See Exhibit 8.7.16-1 for a sample Form 3610.

8.7.16.7.2  
(10-01-2015)

**Form 4667, Examination Changes - Federal Unemployment Tax**

- (1) Form 4667, *Examination Changes - Federal Unemployment Tax*, is used for FUTA tax cases.
  - a. Form 4667 is used for examination of Form 940 resulting in additional tax, overassessments, or delinquent tax.
  - b. Adjustments to Schedule H may require preparation of Form 4667.
- (2) See Exhibit 4.23.10–2, *Form 4667, Examination Changes - Federal Unemployment Tax*, for Form 4667 instructions.
- (3) Compliance's Excel employment tax workbook includes Form 4667, available on the SB/SE website. A link to the workbook can be found by clicking on "Spreadsheets Sharepoint" on the *Appeals TCS website*, and then looking for the "Employment Tax - SBSE" folder.
- (4) The ATE or TCS does not need to prepare a Form 5403, *Appeals Closing Record*, for Form 4667 computations.

8.7.16.7.3  
(10-29-2013)

**Form 4668, Employment Tax Examination Changes Report**

- (1) Form 4668, *Employment Tax Examination Changes Report*, is the basic report form used for all Form 941, Form 943, Form 944, Form 1040 - Schedule H, Form CT-1 and Form CT-2 examinations resulting in additional tax, overassessments, or delinquent tax.
 

**Caution:** Form 4668 modifications are needed if used for either Form CT-1 or Form CT-2 adjustments in an RRTA examination. See IRM 4.23.10.12.2, **Railroad Retirement Tax Act (RRTA) Examination Reports**, for additional information.
- (2) Use a separate Form 4668:
  - a. For each calendar year;
  - b. Unagreed cases that involve wage issues and worker classification issues; and
  - c. Agreed cases that involve wage issues and worker classification issues when the worker classification issue is resolved with a CSP agreement.
- (3) See Exhibit 4.23.10–3, *Form 4668, Employment Tax Examination Changes Report*, for Form 4668 instructions.
- (4) Compliance's Excel employment tax workbook includes Form 4668, available on the SB/SE website. A link to the workbook can be found by clicking on "Spreadsheets Sharepoint" on the "Spreadsheets Sharepoint" on the *Appeals TCS website*, and then looking for the "Employment Tax - SBSE" folder.
- (5) The ATE or TCS does not need to prepare a Form 5403, *Appeals Closing Record*, for Form 4668 computations.

8.7.16.7.4  
(10-01-2015)

**Form 4668-B, Report of Examination of Withheld Federal Income Tax for Withholding Reported on Forms 1099 and W-2G**

- (1) Form 945, *Annual Return of Withheld Federal Income Tax*, is used for non-payroll income tax withholding. Non-payroll items include:
  - Pensions,
  - Annuities and IRA's,
  - Military retirement,
  - Gambling winnings,
  - Indian gaming profits, and
  - Backup withholding.



- (2) Adjustments of “back-up withholding” and “income tax withholding” reportable on Form 945 are reflected on Form 4668–B, *Report of Examination of Withheld Federal Income Tax*.
- (3) Compliance’s Excel employment tax workbook includes Form 4668-B. A link to the workbook can be found by clicking on the **Spreadsheets Sharepoint** on the *Appeals TCS website*, and then looking for the **Employment Tax - SBSE** folder.
- (4) See Exhibit 4.23.10–4, for specific instruction for completing Form 4668–B.
- (5) The ATE or TCS does not need to prepare a Form 5403, *Appeals Closing Record*, for Form 4668-B computations.

## 8.7.16.8 (10-01-2015) **Computations for Unreported Tip Income Cases**

- (1) Employees who receive cash tips of \$20 or more in a month must report the total amount of tips to their employer. Cash tips include tips received directly from customers, tips from other employees under a tip-sharing arrangement, and charged tips distributed to the employee. These tips are **wages** subject to FICA tax. Although tips are treated in the same way for employee RRTA tax as FICA tax, section 3231(e)(3) excludes tips from “compensation” for employer RRTA tax.
- (2) IRC 6053(a) requires that the employee provide a written statement of tip income to the employer by the 10th day of the month following the employee’s receipt of tips. No particular form is required to be used in reporting tip income. Treas. Reg. 31.6053–1 requires that the employee sign the form and disclose:
  - a. The name, address, and social security number of the employee;
  - b. The name and address of the employer;
  - c. The total amount of tip income; and
  - d. The period for which, and the date on which, the statement is furnished. If the statement is for a calendar month, the month and year should be specified. If the statement is for a period of less than one calendar month, the beginning and ending dates of the period should be shown (for example, Jan. 1 through Jan. 8, 2013).

**Note:** Employees may use Form 4070, *Employee’s Report of Tips to Employer*, for the written statement of tip income.

- (3) The employer withholds the employee portion of the FICA or RRTA, to the extent the employee has wages or other funds available to cover the amount of tax. At times, the employee may not have sufficient funds to cover their share of the FICA or RRTA tax on tips. In this instance, adjustments to the portion uncollected from the employee must be reported on line 9, Form 941 or line 6, Form 944. The employer is still liable for the employer portion of FICA on the tips reported. The employer is not required to have supporting documentation for this reduction in tax.
- (4) An employer must report the uncollected social security tax (or railroad retirement taxes, if applicable) with **code A** and the uncollected Medicare tax (or RRTA Medicare tax, if applicable) with **code B** in box 12 of the employee’s Form W-2. An employee includes these taxes on Form 1040. See **Other Taxes** in the Instructions for Form 1040.
- (5) Employers that operate a large food or beverage establishment are required to calculate and report allocated tips on Form 8027, **Employer’s Annual Infor-**

**mation Return of Tip Income and Allocated Tips.** Employers withhold federal income tax, FICA, or RRTA tax only on tips reported by employees, not on allocated tips. Allocated tips are not reported on Form 941, but are included in Box 8 of Form W-2 and must be reported as additional wages on the employee's tax return (unless the employee can prove a smaller amount with adequate records).

- (6) If an employee subject to FICA tax does not report all of the tip income to the employer, the employee is required to file Form 4137, *Social Security and Medicare Tax on Unreported Tip Income*. Unreported tip income (including allocated tips), reported on Form 4137, is carried over to Form 8959, *Additional Medicare Tax*, only if the Additional Medicare Tax is applicable. The Form 4137 and Form 8959 are filed with the Form 1040. A railroad employee who does not report all of his or her tips to his or her employer is required to contact the Railroad Retirement Board. The Railroad Retirement Board computes the amount of railroad retirement tax to be reported on Form 1040.
- (7) Returns with income tax under Subtitle A of the Internal Revenue Code (IRC) and employment tax on unreported tips under Subtitle C of the IRC are processed, assessed, and billed as if both taxes were under Subtitle A of the IRC.
  - a. Therefore, the FICA tax and IRC 6652(b) penalty on the unreported tip income are assessed on the taxpayer's MFT 30 individual income tax account. See IRM 8.17.4.3, *Adjustments Requested by AO Prior to Issuing Notice of Deficiency*, and IRM 8.17.4.26, *Tip Income Cases and FICA Tax Informational Notice*.
- (8) For cases involving unreported tip income, two settlement computations are prepared:
  - a. One settlement computation is a normal income tax computation to compute the income tax due on the unreported tip income. The unreported tip income is included as an adjustment to the taxpayer's taxable income, using Form 5278, Form 4549, etc. Use Form 3610 or the tax computation forms (Form 5278, 4549, etc.) to inform the taxpayer of the separate FICA tax computation with language similar to the following: "Tax adjustments for FICA taxes on unreported tip income are shown on a separate settlement computation. FICA taxes are comprised of the old-age, survivors, and disability insurance (also known as social security taxes), the hospital insurance tax (also known as Medicare tax), and the Additional Medicare Tax."
  - b. The second settlement computation computes the FICA tax due on the unreported tip income using Form 885-T. Prepare Form 885-T similar to the example shown in Exhibit 8.7.16-2. This settlement computation is *separate* from the settlement computation prepared on the income tax portion of the case.
- (9) Form 885-T:
  - a. Form 885-T is used to show the taxpayer how the FICA tax on tips is computed. If using the RGS software program, Form 885-T is automatically generated.
  - b. All adjustments to tip income are electronically provided through the use of reference codes on Form 5403, **Appeals Closing Record**. These reference codes are provided on the "Form 5403 Instructions to APS"



spreadsheet, referred to as the “Form 5403 Worksheet” throughout this IRM section. The Form 5403 Worksheet is prepared by the employee who prepared the settlement computations.

- c. The bottom part of Form 885–T (Schedule T-A) does not have to be completed, since this schedule is no longer sent to the “Social Security Administration” to report adjustments to tip income.

(10) When preparing the Form 5403:

- a. Provide the tip income adjustment reference numbers. See IRM 8.17.5.2.7, *Tip Income Adjustments (FICA)* for the specific, required reference codes. Also see Document 6209, *IRS Processing Codes and Information*, Section 8C, *Item Adjustment Codes & Credit Reference Numbers*.
- b. The Form 5403 Worksheet is available on the “Spreadsheets Sharepoint” on the *Appeals TCS website*. The employee who prepares the settlement computations is also responsible for completing the Form 5403 Worksheet. After it is completed, the ATE is responsible for attaching it to the inside flap on the left side of the administrative file folder.

**Note:** Should it be necessary to issue a statutory notice of deficiency, the ATE must direct APS to assess the additional FICA or RRTA with applicable IRC 6652 penalty before issuing the notice, as though it were an income tax mathematical error. See IRM 8.17.4.3, *Adjustments Requested by AO Prior to Issuing Notice of Deficiency*, and IRM 8.17.4.26, *Tip Income Cases and FICA Tax Informational Notice*.

(11) IRC 6103(l)(1)(C) authorizes disclosure of returns and return information concerning Railroad Retirement Tax (IRC - Chapter 22) to the Railroad Retirement Board (RRB) for administering the Railroad Retirement Act (RRTA). Only RRTA information is permitted to be disclosed to the RRB. For example, FICA changes, FIT changes, FUTA changes, and 1099 penalty results are not permitted to be disclosed. If assistance is required, contact the “Disclosure Office.”

- a. For all closed cases involving adjustments to the RRTA, the ATE must prepare a memorandum to the RRB. The memorandum will include the employee’s name, Social Security number, name of the railroad employer, and the amount of the adjustment subject to railroad retirement tax.
- b. APS will mail the package to:

Chief Financial Officer  
Railroad Retirement Board  
844 N. Rush Street  
Chicago, IL 60611

8.7.16.9  
(10-01-2015)  
**Self-Employment  
Adjustments**

(1) Self-employment adjustments for filed and delinquent returns are updated using “reference numbers” on the Form 5403. When preparing the settlement computations, provide the correct “reference numbers” and “amounts” as listed below:

- a. **Reference Number 878** - Adjusts Primary Self-Employment Income  
Net increase/decrease of self-employment income for “primary” taxpayer that is subject to social security tax. This amount cannot bring the taxpayer-

er's total self-employment income over the maximum amount subject to the social security portion of self-employment tax.

- b. **Reference Number 879** - Adjusts Secondary Self-Employment Income  
Net increase/decrease of self-employment income for "secondary" taxpayer that is subject to social security tax. This amount cannot bring the taxpayer's total self-employment income over the maximum amount subject to the social security portion of self-employment tax.
- c. **Reference Number 895** - Adjustment to primary Medicare Income  
Net increase/decrease in self-employment income for "primary" taxpayer that is subject to Medicare tax (there is no maximum amount). Valid for tax period 199112 and subsequent.
- d. **Reference Number 896** - Adjustment to secondary Medicare Income.  
Net increase/decrease in self-employment income for **secondary** taxpayer that is subject to Medicare tax (there is no maximum amount). Valid for TP199112 and subsequent.
- e. **Reference Number 889** – Self-Employment Tax Adjustment  
Total net increase/decrease in self-employment tax for both primary taxpayer and secondary taxpayer. If self-employment income is less than \$400, Item 15 is left blank. If the adjustment reduces the self-employment income to less than \$400, enter the amount needed to reduce the income to zero. Valid 197412 thru 197511 and 197712 subsequent.
- f. To adjust Additional Medicare Tax, the correct reference numbers include the following:  
  - Reference Number 863** - Additional Medicare Tax on Medicare Wages PLUS the Additional Medicare Tax on SE Income
  - Reference Number 864** - Additional Medicare Tax on RRB compensation
  - Reference 806** - W-2 Withholding Tax and/or Excess FICA Contribution Credit
  - Reference 807** - W-2 Withholding Tax and/or Excess FICA Contribution Debit

**Note:** See IRM 21.6.4.4.19, *Additional Medicare Tax*, for more information.

- (2) Reference Number 889 is required when "reference numbers" 878 or 879 are entered. If "reference number" 878 or 879 is entered but adjustments made to income did not change the self-employment tax, "reference number" 889 must be entered with a "zero" amount.
- (3) See IRM 8.17.5.2.8, **Self Employment Tax Adjustments**, and all subsections for additional information.

8.7.16.10  
(10-01-2015)  
**Computations Involving  
Adjustment to  
Household Employment  
Taxes (Schedule H)**

- (1) An individual who employs domestic workers generally reports employment tax payments annually on Schedule H, "Household Employment Taxes" (which is attached to Form 1040, Form 1040-NR, Form 1040-SS, or Form 1041).
- (2) However, instead of filing a Schedule H, an individual who employs both household employees and non-household employees may choose to report employment taxes for all employees (household and other employees) on Form 941, *Employer's QUARTERLY Federal Tax Return*, or Form 943, *Employer's Annual Return for Agricultural Employees*, or Form 944, *Employer's ANNUAL Federal Tax Return*, and report FUTA taxes annually for all employees on Form 940, *Employer's Annual Federal Unemployment (FUTA) Tax Return*.

- (3) If an individual is not required to file an income tax return (i.e. the individual's income doesn't exceed the filing threshold for the filing status), Schedule H must be filed by itself.
- (4) The employer's use of Schedule H to report these taxes does not change the character of the taxes that are withheld and paid by household employers from "employment taxes" to "income taxes".
  - a. Employment tax audit adjustments are not included on income tax Forms 5278, 4549, etc.
  - b. Adjustments to Schedule H are not subject to the statutory deficiency procedures and are not included in a statutory notice of deficiency.
  - c. Use Form 4668 and Form 4667 for all employment tax adjustments for household employees. Adjustments to Schedule H are made to the 4th quarter on Form 4668.
  - d. If the employer does not have an EIN, the ATE can have the employer complete and file a Form SS-4, *Application for Employer Identification Number*, to obtain one. If the employer will not obtain one, the ATE can obtain an EIN for the employer in order to complete the necessary processing of the case.

**Note:** An EIN can be obtained by following the instructions on Form SS-4 under the heading "How to Apply".

8.7.16.11  
(10-01-2015)  
**Adjustments to Form 944, Employer's ANNUAL Federal Tax Return**

- (1) Form 944, **Employer's ANNUAL Federal Tax Return**, is designed so the smallest employers can file and pay their employment tax liabilities only once a year, instead of quarterly. If IRS notified an employer to file Form 944, the employer must file this form. If the employer did not receive written IRS notification to file Form 944, an employer could qualify for the program if one of the following applies:
  - The taxpayer is a new employer who expects to have less than \$1,000 in employment tax liability for the calendar year, or
  - The taxpayer filed Form 944 for the prior year and reported \$1,000 or less in total tax liability.

**Note:** Additional information regarding Form 944, the Form 944 Program, and the transition of current filers may be found in IRM 21.7.2.4.9, *Form 944, Employer's ANNUAL Federal Tax Return*.

- (2) Any adjustments to items reported on Form 944 are made to the 4th quarter on Form 4668, *Employment Tax Examination Changes Report*.

8.7.16.12  
(10-29-2013)  
**Adjustments to Form 945, Annual Return of Withheld Federal Income Tax**

- (1) Form 945, *Annual Return of Withheld Federal Income Tax*, must be filed to report backup withholding (BUWH) and income tax withheld from non-payroll items, such as:
  - Pensions
  - Annuities
  - IRAs
  - Military retirement
  - Gambling winnings
  - Indian Gaming Profits

**Note:** All income tax withholding and BUWH reported on Form 1099 or W-2G must be reported on Form 945.

- (2) Form 945 is an annual return - due January 31 following the close of the calendar year.

**Exception:** The return due date for Form 945 is extended 10 days if timely deposits are made which full pay the amount of tax reported.

- (3) Adjustments to non-payroll items reported on Form 945 are made using Form 4668-B, *Report of Examination of Withheld Federal Income Tax*.

8.7.16.13  
(10-01-2015)  
**Employment Tax  
Reference Codes**

- (1) Document 6209, *IRS Processing Codes and Information*, Section 8C, *Item Adjustment Codes & Credit Reference Numbers*, identifies the specific reference codes applicable to employment tax cases. See Exhibit 8.20.7-1, *Form 5403, Appeals Closing Record (Instructions)*, Item 15 for additional information.
- (2) There may be some cases where the reference code amounts are difficult to determine. In these instances, the employee preparing the settlement computations may need to provide the reference code amounts to APS. The amounts do not have to be provided on the face sheet, but should be provided in a manner that enables APS to easily understand them.
- a. For example, in cases involving a partial abatement of a previously assessed employment tax, the amount shown on Form 4668 for “reference code 004” is not the amount that needs to be posted to the Form 5403. The correct amount is the difference between the “amount showing on the Form 4668” and the “amount previously posted”, determined as follows:

<b>Social security wages per settlement (Form 4668)</b>	<b>\$39,771.00</b>
Social security wages per prior determination	59,771.00
Reference code 004 per settlement	(20,000.00)

8.7.16.14  
(10-01-2015)  
**Computations for  
Worker Reclassification  
and Section 530 Issues**

- (1) This section discusses preparing a settlement computation when an employment tax case contains only worker classification and/or Section 530 issues.
- (2) An employment tax case **may contain both** worker reclassification/Section 530 issues and non-worker classification/Section 530 issues.
- a. The worker classification and/or Section 530 issues are often referred to as “Section 7436” issues, because Section 7436 gives the Tax Court jurisdiction over worker classification and Section 530 controversies.
- b. The non-worker classification and/or Section 530 issues are often referred to as “Non-Section 7436” issues, because the Tax Court does not have jurisdiction under Section 7436 (or otherwise) over other employment tax controversies.
- (3) Separate reports **MUST** be prepared if both Section 7436 issues and Non-Section 7436 issues are present. You must identify the worker classification and/or Section 530 issues for the TCS, if the TCS is preparing the settlement computations.

- (4) If a case involves both Section 7436 and Non-Section 7436 issues, take the following steps:
  - a. Prepare an employment tax settlement computation for the Non-Section 7436 issues (i.e., the employment taxes that are independent of the worker classification and/or section 530 issues). Follow the normal procedures for preparing an employment tax settlement computation discussed in IRM 8.7.16.7. There is one exception - insert the notation "Form 2504 Non-Section 7436 issues" in the other information section near the bottom of the Form 4667 and/or Form 4668.
  - b. Prepare an employment tax settlement computation for the Section 7436 issues (i.e., the employment tax issues relating to worker classification and/or Section 530). Follow the normal procedures for preparing an employment tax settlement computation discussed in IRM 8.7.16.7. There is one exception - insert the notation "Form 2504-WC IRC Section 7436 issues" in the other information section near the bottom of the Form 4667 and/or Form 4668.
- (5) Unagreed non-docketed cases:
  - a. Appeals issues Letter 3523, *Notice of Determination of Worker Classification* (NDWC), for the Section 7436 issues. See IRM 8.7.16.25.1, *Preparing the IRC 7436 Notice of Determination of Worker Classification Letter 3523*.
  - b. The report prepared for the Non-Section 7436 issues is forwarded by you to APS to be assessed.

**Note:** The issuance of the NDWC does not suspend the statute on the Non-Section 7436 Issues (i.e., the non-worker classification/Section 530 issues).

8.7.16.15  
(10-01-2015)  
**Additional Information  
Required for  
Employment Tax  
Computations**

- (1) See the following regarding amounts available for abatement:
  - a. When an employer fails to withhold "Income Tax" or "Additional Medicare Tax" from employees' wages, the employer is liable for payment of the tax required to be withheld, unless the employer can show that the tax "not withheld, as required" has been paid by the employee. Further, the employer is liable for interest and any penalties due for failure to withhold and pay over the tax. See IRC 3402(d) and IRC 3102(f)(3).
  - b. Interest is due on the "tax the employer should have withheld" from the date or dates prescribed for payment of the tax to the following April 15, or to the date the employee satisfied the income tax liability, whichever is earlier.

**Note:** This provision is applicable when the adjustment does not qualify for an interest -free adjustment under IRC 6205 .

- c. On all amounts not subject to abatement under IRC 3402(d) or IRC 3102(f)(3), the general rule is that interest runs from the due date of the return until the date of assessment or payment, whichever is earlier. The general rule doesn't apply if the adjustment qualifies for an interest free adjustment under IRC 6205. In certain circumstances an interest-free adjustment under IRC 6205 may be warranted, see IRM 8.7.16.23, *Interest-Free Adjustment under Section 6205(a)*.

- (2) If an adjustment is made to backup withholding under IRC 3406, use Form 4668-B. See IRM 20.1.4.8, *Employment Tax (Forms 941, 943, 944, 945, and CT-1)*, for revised reporting requirements and penalty computation.
- (3) Employment tax (FICA and RRTA) on tip income is adjusted as Form 941 or Form CT-1 tax only, when the employer failed to properly report and pay tax on tip income reported to him or her by the employee.
- (4) In determining the employer's FICA tax obligation, tips received by an employee are deemed to have been paid by the employer. The remuneration is deemed to be paid when the employee furnishes to the employer (in the manner prescribed by the Secretary) a written statement of tips received or for unreported tips, when notice and demand for the taxes is made to the employer by the IRS. See IRC 3121(q) and Rev. Rul. 2012-18, **Tips Included for Both Employee and Employer Taxes**.

8.7.16.16

(10-01-2015)

**Adjustment for  
Employee FICA Tax  
(Form 885-E)**

- (1) An employee's share of the FICA taxes might be adjusted as discussed below:
  - a. There will be instances when only a worker is examined. When a worker verifies that the services the worker performed for someone else (i.e. an individual, partnership, corporation, etc.) were carried out as an "employee", rather than an **independent contractor**, yet the worker was treated as an independent contractor, the worker's return is adjusted to include the employee's share of the FICA tax.
  - b. There may be instances where a worker was determined to be an employee, but the employer received "Section 530 Relief" under Section 530 of the Revenue Act of 1978 which terminated the employer's employment tax liabilities. The worker is still liable for the employee's share of the FICA tax.

**Note:** The Small Jobs Protection Act of 1996 amends Section 530. After 1996, the IRS determines whether "Section 530" applies prior to determining "worker status".

- c. If a worker receives a Form W-2 from an employer as a result of a worker status determination (after an audit of the payor), the worker is liable for the employee's share of the FICA tax. The employee's share is not reduced as a result of the employer's liability determined at a reduced rate under IRC 3509.

**Note:** When a worker is liable for the employee's share of the FICA tax, the worker should use Form 8919, *Uncollected Social Security and Medicare Tax on Wages*, to report their share of uncollected Social Security and Medicare taxes due on their compensation.

- (2) If an employee's share of FICA is adjusted, then:
  - a. Prepare Form 885-E, *Schedule for FICA Tax Adjustment of Wages not Previously Reported*, to compute and report the amount of wages subject to the FICA tax and the amount of the FICA tax adjustment.
  - b. Prepare a settlement computation if the compensation was not properly reported as "wages" on the employee's return. For example: An employee reported earnings as "self employment income" (SE Income) and reported "self employment tax" (SE Tax), with no self-employment deductions. The settlement computation would include reductions to eliminate the SE Income and SE Tax. In addition, the computation would include an



increase for the amount of the earnings now shown as “wages”. Include the adjustments on the usual income tax computation forms such as Form 5278, Form 4549, etc. Form 3610 (if prepared) or the tax computation forms (Form 5278, Form 4549, etc.).

**Note:** Inform the taxpayer of the separate FICA tax computation by including language similar to the following: “Tax adjustments for FICA taxes on unreported tip income are shown on a separate settlement computation. FICA taxes are comprised of the Old-Age, Survivors, and Disability Insurance taxes (also known as Social Security Tax), the Hospital Insurance Tax (also known as Medicare tax), and the Additional Medicare Tax.”

- (3) Since the adjustment for employee FICA tax is **not an income tax adjustment**, Form 2504 or other Form 2504 type agreement form must be used to solicit agreement to the adjustment for employee’s share of FICA.
- (4) You should attach Form 885-E to the left inside flap of the administrative file when the case is closed. Form 885-E is used to forward the information to the Social Security Administration (SSA).
- (5) Should it be necessary to issue a statutory notice of deficiency, you must tell APS the dollar amount of the additional FICA tax to assess before issuing the notice, as though it were an income tax mathematical error, because FICA tax is not subject to the deficiency procedures. See IRM 8.17.4.3, *Adjustments Requested by AO Prior to Issuing Notice of Deficiency*.
- (6) See Exhibit 8.7.16-3 for an example of Form 885-E and instructions.
- (7) For information on FICA tax rates, see Document 6209, *IRS Processing Codes and Information*, Section 3.14, *Social Security Tax Rate Table (Formerly FICA)*.

8.7.16.17  
(10-01-2015)  
**IRC 6020(b) Substitute  
for Return Case  
Processing**

- (1) When a taxpayer fails to file an employment tax return, the Service may prepare a return under the authority of IRC 6020(b) in either of the following two ways:
  - a. Collection personnel prepare a return that reflects the proposed tax for assessment under IRC 6020(b) case processing procedures; or
  - b. Compliance personnel generally use “substitute for return” procedures with the proposed tax shown as a liability in the examiner’s report.

**Note:** Cases developed under either method may be protested to Appeals.

- (2) A Technical Service Unit reviewer reviews Area office cases prior to transmitting them to Appeals.
- (3) On agreed cases, Appeals requests that the taxpayer sign the “substitute for return”. If the taxpayer agrees to a revised tax, request the taxpayer sign a new return. In either case, the return is marked “Delinquent”.
- (4) If Appeals concedes the proposed liability, mark the substitute for return “VOID—do not process” and retain it in the case file.
- (5) Unagreed cases:
  - a. Employment tax cases (except Section 7436 cases) cannot be litigated in the Tax Court. Therefore, any unagreed employment tax case (except IRC

7436 cases) is assessed without issuing a notice of determination. The proposed tax return prepared by the originating office, or a revised tax return prepared by the AO is processed for assessment.

- b. Sign, date and print your title on the "Date, Signature and Title" line of the return. Write the following statement below the signature:  
"This return was prepared and signed under the authority of Section 6020(b) of the Internal Revenue Code".

**Note:** The authority to sign IRC 6020(b) returns is granted to ATEs under Delegation Order 8-8.

- c. For unagreed issues involving worker classification and/or Section 530, IRC 7436 grants authority to the Tax Court to decide whether the Service's determination is correct. Issue Letter 3523, **Notice of Determination of Worker Classification**, allowing 90 days for the taxpayer to petition the Tax Court to review the determination. No assessment will be made in respect to the IRC 7436 issues until expiration of the period for filing a Tax Court petition. If the taxpayer timely petitions, no assessment will be made until the Tax Court's decision becomes final.

- (6) Forward a copy of the Appeals report providing information about the disposition of the case to the Area Technical Services.
- (7) For information on application of the failure to file and failure to pay penalties, see IRM 20.1.2, *Failure to File/Failure to Pay Penalties*.

8.7.16.17.1  
(10-01-2015)

**Establishing Substitute  
for Returns under IRC  
6020(b)**

- (1) These cases are on BMF accounts only and are usually received in non-docketed status.
- (2) They are established on AIMS by Appeals, if not already established. Therefore, Form 5403 instructions are needed for APS to process an assessment. For ACDS information, see IRM 8.20.5.35.1, **Substitute for Return Under IRC 6020(b) Case Carding**.

8.7.16.17.1.1  
(10-01-2015)

**Substitute for Return  
Case Processing  
Procedures**

- (1) For non-worker classification agreements, request that the taxpayer sign Form 2504, *Agreement to Assessment and Collection of Additional Tax and Acceptance of Overassessment (Excise or Employment Tax)*, or Form 2504-AD, *Offer of Agreement to Assessment and Collection of Additional Tax and Offer of Acceptance or Overassessment (Excise or Employment Tax)*. Form 2504-AD or Form 2504-S, *Agreement to Assessment and Collection of Additional Tax and Acceptance of Overassessment* can be used if worker classification issues were not examined.
- (2) For worker classification agreements, use Form 2504-AD or Form 2504-WC, *Agreement to Assessment and Collection of Additional Tax and Acceptance of Overassessment in Worker Classification Cases (Employment Tax)*.
- (3) For unagreed cases non-7436 issues, the "determined tax" is processed on Form 5403, *Appeals Closing Record*.
- (4) See IRM 20.1.2, *Failure to File/Failure to Pay Penalties* for information on application of the failure to file and failure to pay penalties.



8.7.16.18  
(10-01-2015)  
**Receipt of Forms 4669  
and 4670 During  
Examination**

- (1) An employment tax case received in Appeals could contain Form 4669, **Statement of Payments Received**, with a Form 4670, **Request for Relief from Payment of Income Tax Withholding**, filed by the taxpayer during the examination.
- (2) If IRC 3509 rates are not used, the taxpayer may be entitled to IRC 3402(d) and/or IRC 3102(f)(3) relief. If this is the case, forward Forms 4669 and 4670 to the Campus.

8.7.16.19  
(10-01-2015)  
**Subsequent Returns and  
Future Compliance**

- (1) When considering settlement of an employment tax case, advise the taxpayer to correct any subsequent quarterly return(s) not under examination in accordance with IRC 6205 and the applicable regulations.

For example, if the return for the fourth quarter of 2008 is under Appeals consideration, the subsequent quarters filed in 2009, not under examination, should be corrected by the taxpayer based on the Code and applicable regulations.

- (2) Provide feedback to Compliance on all employment tax cases initiated by them. A copy of Form 5402, Appeals Transmittal and Case Memorandum, is sent to the respective function within SB/SE or TE/GE, when the case is closed in accordance with customized Form 5402 procedures.
- (3) The Classification Settlement Program (CSP) guidelines require that a copy of the closing agreement, which includes a paragraph requiring the taxpayer to treat the workers as employees starting on a certain date, be forwarded to the Centralized Workload Selection and Delivery (CWSD) for follow-up monitoring. See IRM 8.7.16.21 for information about the CSP. When a case in Appeals results in a CSP settlement, a copy of the CSP agreement, ACM, Form 5402 are sent to the CWSD. The CWSD mailing address is:

IRS Service Center Campus  
201 West River Center Blvd.  
Stop 5701-G:PSP Classification  
Covington, KY 41011

- (4) Where Appeals identifies an aspect of a closed case that warrants special attention in addition to the ACM, provide feedback in a separate memorandum.

8.7.16.20  
(10-01-2015)  
**Coordinating  
Employment Tax with  
Social Security  
Administration (SSA)**

- (1) The Office of the Associate Chief Counsel (CC:TEGE) has responsibility for all coordination procedures between National Office and the General Counsel of the Social Security Administration (SSA).
- (2) If Appeals reaches a conclusion different from the SSA with respect to the same factual situation in an employment tax case, Appeals will notify the Office of the Associate Chief Counsel (CC:TEGE) and the Associate Counsel office contacts the General Counsel of the Social Security Administration (SSA) and presents the views of Appeals for reconciliation. Any disclosure of taxpayer information must be through authorized persons in the IRS.
  - a. If the SSA agrees with Appeals, the Associate Chief Counsel (CC:TEGE) advises the Appeals office, through the Chief, Appeals, and the case is closed accordingly.
  - b. If the SSA disagrees, the Associate Chief Counsel (CC:TEGE) advises Appeals of this also. The Appeals Office then reconsiders its position and

decides whether to alter it, or request that coordination efforts be continued through Chief Counsel for reconciliation of views with the General Counsel of the Social Security Administration (SSA).

8.7.16.21  
(10-01-2015)

**Classification Settlement Program (CSP)**

- (1) If the taxpayer does not qualify for "Section 530 relief", consider the "Classification Settlement Program (CSP)". A taxpayer qualifies for a CSP offer, if the taxpayer has filed all required Forms 1099 for the particular class of workers in question for the tax periods at issue. The taxpayer is still entitled to the CSP settlement, even if it is rejected in Compliance.
- (2) Under CSP, Service examiners can offer businesses under examination a "worker classification settlement" using a closing agreement, when a worker who was "treated as an independent contractor" is determined to be an employee.
- (3) If the taxpayer timely filed Form 1099's, but fails the "substantive consistency" test or does not have a "reasonable basis", the CSP offer provides that the taxpayer "begins to treat the workers correctly" and agrees to an assessment equal to one year's tax for the latest audit year.
- (4) If the taxpayer timely filed Form 1099's and has both a "substantive consistency" argument and a "reasonable basis" argument with some merit, the CSP offer must require future compliance and agreement to an assessment equal to 25% of the FICA tax and federal income tax withholding for the latest audit year. FUTA is assessed at 100%.
- (5) If the Form 1099's are **not** timely filed, then the taxpayer is not entitled to a CSP offer - but the case may be appropriate for a settlement based on hazards of litigation.
- (6) For detailed information on CSP see IRM 4.23.6, *Employment Tax - Classification Settlement Program (CSP)*.

8.7.16.22  
(10-29-2013)

**Appeals Waives Jurisdiction in Determination of Worker Classification Cases**

- (1) Delegation Order No. 8-8 (IRM 1.2.47.9) vests settlement jurisdiction in Appeals offices during the 90-day period in all protested cases in which the Territory Manager issued the Notice of Determination of Worker Classification (NDWC).
- (2) The delegation order permits the Area Director of Appeals to relinquish this jurisdiction by waiver to the office of the Territory Manager that issued the notice, except in those cases in which criminal prosecution is pending or the ad valorem fraud penalty is involved. The Area Director of Appeals for the region that includes Washington, D.C., may relinquish jurisdiction to the office of the Assistant Commissioner (International) if that office issued the notice. Appeals may waive jurisdiction in all cases that were handled by the Examination function, regardless of the amount involved.
- (3) When issued, the waiver of jurisdiction operates to vest in the office of the Area Director complete jurisdiction of the case during the 90-day period, including the authority to transfer the case to another Area.
- (4) The office clearly labels the top of this revised examination report, "Supplement to the "NDWC." This revised report does not nullify or supersede the original notice, nor does it extend the statutory period for filing a petition with the Tax Court.

8.7.16.23  
(10-01-2015)  
**Interest-Free Adjustment  
under Section 6205(a)**

- (1) IRC §6205 provides that an employer who makes, or has made an under collection or underpayment of FICA/RRTA tax or income tax withholding, may make interest-free payments of the tax due when certain conditions are met in accordance with Treas. Reg. 31.6205-1 effective for adjustments on or after January 1, 2009. This provision does not apply to FUTA.
  - (2) IRC 6205 allows employers to report and pay additional liability for FICA/RRTA tax and withheld income taxes as an interest-free adjustment, if certain requirements are met. The regulations under IRC 6205 provide that to be interest-free, the adjustment must be made by the due date of the return for the return period in which the error is ascertained and the amount of the underpayment must be paid by the time the adjusted return (e.g., Form 941-X) is filed or interest will accrue from that date. An interest-free adjustment cannot be made for any Income Tax or Additional Medicare Tax withheld in a prior calendar year - unless it is to correct an administrative error, section 3509 applies, or the adjustment is reported on a Form 2504-WC, or other prescribed form.
  - (3) The **discovery date** is when the employer has sufficient knowledge of the error to be able to correct it. Such knowledge may be obtained, for example, in the course of an examination. In an agreed case, this is when the employer signs Form 2504 (Agreement to Assessment and Collection of Additional Tax and Acceptance of Overassessment (Excise or Employment Tax)), Form 2504-WC (Agreement to Assessment and Collection of Additional Employment Tax and Acceptance of Overassessment in Worker Classification Cases (Employment Tax) or Form 2504-AD (Excise or Employment Tax- Offer of Agreement to Assessment and Collection of Additional Tax and Offer of Acceptance of Overassessment). For an unagreed case, it is at the conclusion of an Appeals conference. See Rev. Rul. 2009-39, 2009-52, I.R.B 951.
  - (4) If the case is agreed in Appeals, the taxpayer receives complete interest-free treatment for the FICA and federal income tax withholding liability when full paid by the time the signed Form 2504, Form 2504-WC, Form 2504-S or Form 2504-AD is provided to Appeals. If the taxpayer agrees and doesn't pay, interest starts the day after the date of the agreement.
  - (5) If the case is unagreed in Appeals, the availability of an interest-free adjustment ends when the taxpayer has exhausted appeal rights. This occurs when the Service issues the Notice of Determination of Worker Classification (NDWC) to the taxpayer on cases involving worker classification and/or Section 530 issues. Once a taxpayer has received a NDWC an interest-free adjustment is no longer permitted. Thus, if the Service prevails in Tax Court, interest accrues back from the due date of the return on which the tax was required to be reported and paid. In employment tax cases not involving worker classification and/or Section 530 issues, an interest-free adjustment is no longer available once the taxpayer receives a notice and demand for payment based upon the assessment.
- Note:** If the case is closed unagreed but the taxpayer subsequently sends in a signed Form 2504, 2504-WC, or 2504-AD before the taxpayer receives a notice of demand for payment or Notice of Determination of Worker Classification, and before the due date of the return for the period in which you closed the case, interest-free treatment is available.
- (6) Interest-free adjustments are not allowed if the taxpayer knowingly underreports the employment tax liability or if the amounts underreported relate to an issue that was raised in an examination of a prior period. See Treas. Reg.

section 31.6205-1, effective for errors discovered on or after January 1, 2009 and Rev. Rul. 2009–39, 2009–52 I.R.B. 951 or rules relating to interest-free adjustments.

- (7) The ATE must include instructions in their closing documents to APS regarding the availability of the IRC Section 6205(a) interest-free adjustment and the applicable dates.

8.7.16.24  
(10-01-2015)  
**Appeals Consideration  
of FICA and SECA  
Issues**

- (1) Appeals considers protested issues involving FICA or SECA, except as provided below:
- a. Protests received from taxpayers disagreeing with a coordinated determination that there is no liability for taxes under the FICA with respect to one or more employees, based upon a finding that no bona fide employer-employee relationship existed.
  - b. Protests disagreeing with a coordinated determination that there is no liability for taxes under the SECA based upon a finding that the taxpayer had no self-employment income subject to the tax.
- (2) The Social Security Administration (SSA) does not give an opinion on an employment tax issue raised by the Service. SSA uses Form SSA-7000, *Notice of Determination of Self-Employment Income*, and Form SSA-7010, *Notice of Determination of FICA Wages*, to advise the Service of its findings resulting from claims for correction of the earnings posted to their social security record submitted by a self-employed person or employees.
- (3) If the Compliance Area Director does not agree with those findings, IRM 4.23.2.10, **Coordination with Social Security Administration**, provides for coordination between the Area Compliance function and the field office of the SSA to resolve the differences. If preliminary review of the file in an employment tax case discloses unresolved divergent views, promptly return the case for compliance with IRM 4.23.2.10.
- (4) If Appeals disagrees with a coordinated determination made by Compliance and the SSA in an employment tax case, the Appeals Area Director or the Appeals Team Manager notifies the Chief Appeals. To provide prompt identification for the SSA, the memorandum will supply the taxpayer's social security number (or date of birth) when the number is not available.
- (5) This procedure is also applicable in a case where, prior to final action, the decision reached by Appeals is in conflict with the views of the SSA, whether or not the case was previously made the subject of coordination procedure.

8.7.16.25  
(10-01-2015)  
**Explanation of IRC 7436  
Notices of Determination  
of Worker Classification**

- (1) This section covers procedures for IRC 7436 Notices of Determination of Worker Classification.
- (2) Effective August 5, 1997, section 1454 of the Taxpayer Relief Act of 1997 added section 7436 to the Internal Revenue Code.
- (3) IRC 7436(a) provides for purposes of subtitle C of the Code, the Tax Court has jurisdiction to:
- a. Review the Service's determination that one or more individuals performing services for the taxpayer are employees;

- b. Review the Service's determination that the taxpayer is not entitled to treatment under Section 530(a) of the Revenue Act of 1978 as amended with respect to those individuals; and
  - c. Determine the proper amount of employment tax under the above determinations
- (4) The employment taxes imposed by subtitle C of the Code are listed below:
  - Federal Insurance Contributions Act (FICA) taxes (under IRC 3101 through IRC 3128)
  - Railroad Retirement Tax Act (RRTA) taxes (under IRC 3201 through IRC 3232)
  - Federal Unemployment Tax Act (FUTA) taxes (under IRC 3301 through IRC 3311)
  - Railroad Unemployment Repayment Tax (RURT) taxes (under IRC 3321 through IRC 3322)
  - Collection of income tax at the source on wages (under IRC 3401 through IRC 3406).
- (5) "Employment tax" under the statutory language includes the additions to tax, additional amounts, and penalties provided by chapter 68A of the Code ( IRC 6651 through IRC 6665). The Tax Court has jurisdiction to determine the proper amount of the additions to tax, additional amounts, and penalties that relate to the employment tax imposed by subtitle C with respect to determinations of worker classification and section 530 treatment.
- (6) The Service issues a Notice of Determination of Worker Classification after it determines that both of the following situations exist:
  - a. One or more individuals performing services for the taxpayer are employees for purposes of Subtitle C.
  - b. The taxpayer is not entitled to relief under section 530(a) of the Revenue Act of 1978 as amended.
- (7) See Notice 2002-5 for more information concerning the procedures for preparing and issuing the Notice of Determination of Worker Classification.

8.7.16.25.1  
(10-01-2015)  
**Preparing the IRC 7436  
Notice of Determination  
of Worker Classification  
Letter 3523**

- (1) The Service informs taxpayers of a determination described in IRC 7436(a) by sending (by certified or registered mail) a "Notice of Determination of Worker Classification".
 

**Note:** The "Notice of Determination of Worker Classification" is also referred to as a "Notice of Determination".
- (2) The Notice of Determination is similar to a Notice of Deficiency, since the taxpayer can petition Tax Court.
- (3) Worker classification employment tax cases under IRC 7436 do not involve a deficiency (as defined in IRC 6211). However, the discussion in IRM 8.17.4.8.3, *General Guidelines for Preparing the Letter*, and related subsections concerning the accuracy of the name and address on Notices of Deficiency are used for guidance when preparing a Notice of Determination.
- (4) **Enclosures with Notice of Determination** - Every Notice of Determination of Worker Classification (Letter 3523) has the following enclosures:



- Form 2504-WC (Agreement to Assessment and Collection of Additional Tax and Acceptance of Overassessment in Worker Classification cases),
- Form 4666 (Summary of Employment Tax Examination),
- Form 4667 (Examination Changes - Federal Unemployment Tax) and/or Form 4668 (Employment Tax Examination Changes Report),
- Schedules with explanations of the proposed assessments (Exhibit 8.7.16-4),
- Publication 3953 (Questions and Answers About Tax Court Proceedings for Determination of Employment Status Under IRC 7436).

**Note:** Only one Notice of Determination is required if the individuals reclassified as employees are subject to either or both FUTA and FICA taxes.

- (5) See IRM 4.23.10.9, *Special Procedures for Notices of Determination of Worker Classification or Section 530 Relief*, for additional information.

8.7.16.25.1.1  
(10-01-2015)

**Notice of Determination  
of Worker Classification  
Letter 3523**

- (1) The Letter 3523, *Notice of Determination of Worker Classification*, is available on APGolf.
- (2) Letter 3523 contains two tables that must be completed.
- (3) "Table 1" of the Notice of Determination must be completed to identify the workers the Service has determined should be classified as employees.
  - a. "Table 1" on page 2 of the Notice of Determination is used to list the reclassified workers' names and to mark (**using an "x" or "✓"**) the quarters for which the workers are being reclassified. **Do not list dollar amounts in Table 1.**
  - b. If names are not available, provide the job description of the workers. Also, make sure to document what steps were taken to obtain the names and why the names were unavailable.
  - c. The use of Social Security numbers for identification of workers is **not allowed** on a NDWC.
  - d. Place an "X" in the Calendar Year column to indicate the reclassified wages are subject to FUTA.
- (4) "Table 2" of the Notice of Determination must include the Service's determination of the proper amount of employment tax, additions to tax, and/or penalties that result from treating the workers listed in "Table 1" as employees.
  - a. The amount of employment tax, additions to tax, and/or penalties must be taken from the attachments (Form 4667 and/or Form 4668) and inserted in "Table 2" of the Notice of Determination.
  - b. The amounts must be organized by type of employment tax (Old Age, Survivor, & Disability Insurance, Hospital Insurance, Additional Medicare Tax, and Income Tax Withholding) rather than by type of return and listed separately for each quarter.
  - c. The total FUTA tax is reported in the December 31 period.
  - d. Copies of Forms 4666, 4667, and 4668 must be attached to the *Notice of Determination* to show the rates used in calculating the employment taxes.
- (5) "Table 1" and "Table 2" are included in the APGolf Letter 3523, which is in a Word format.

- a. If desired, Excel schedules can be created and substituted for page 2 (which includes “Table 1”) and/or page 3 (which includes “Table 2”) of the APGolf Letter 3523.
- b. If the list of reclassified employees is lengthy, Compliance’s schedules of reclassified employees may be photocopied and used instead of “Table 1”. Make sure to include on the first page of the photocopied schedules the sentence on page 2 of Letter 3523 which reads “For the tax periods indicated, we determined that the following individual(s) are to be legally classified as your employees:”
- c. If the list of reclassified employees is voluminous, an alternative method is to move “Table 1” to a separate exhibit. Modify the sentence on page 2 of Letter 3523 to refer to an exhibit where the reclassified employees are listed. For example, the sentence on page 2 of Letter 3523 reads “For the tax periods indicated, we determined that the following individual(s) are to be legally classified as your employees:” Instead, use the following sentence: “For the tax periods ending (*enter applicable tax periods*), we determined that the individuals listed on the attached Exhibit A are to be legally classified as your employees.” Compliance’s schedules of reclassified employees may be photocopied and used as the attached exhibit. Excel spreadsheets may also be used for the exhibit.
- d. If Compliance’s schedules of reclassified employees are photocopied and used in the Notice of Determination, carefully check the schedules and verify their accuracy. Edit them to include required information and to exclude unnecessary or misleading information or references.

8.7.16.25.1.2  
(10-01-2015)

**Waiver Form 2504-WC or  
Form 2504-AD**

- (1) Form 2504-WC was created to use for worker reclassification and section 530 issues. If the settlement is based on hazards of litigation, use Form 2504-AD and select the paragraph to include language waiving restrictions on assessment provided in IRC 7436(d) and IRC 6213(a).
- (2) Form 2504-WC is available on APGolf, and Form 2504-AD is available on the publishing site. Also, Form 2504-WC is also available in the Excel spreadsheet employment tax templates developed by Compliance and available on the SB/SE Employment Tax website. A link to the templates can be found by clicking on *Spreadsheets SharePoint* on the Appeals TCS website, and then looking for the *Employment Tax - SBSE* folder.
- (3) A Form 2504-WC must be included as an attachment with the NDWC to provide taxpayers with an opportunity to agree to the proposed employment tax adjustment administratively. Form 2504-WC contains the statement that allows taxpayers to waive restrictions on assessments under IRC 7436(d) and IRC 6213(a).
- (4) List the totals from Form 4667 and/or Form 4668 on Form 2504-WC or Form 2504-AD.
- (5) See Exhibit 4.23.10–7 for instructions on how to complete Form 2504-WC.

8.7.16.25.1.3  
(10-01-2015)

**Forms 4666, 4667 and  
4668**

- (1) Forms 4666, 4667 and/or 4668 must be attached to the Notice of Determination to show rates used in calculating the employment taxes.
  - a. Forms 4666, 4667 and/or 4668 set forth only those amounts that depend directly upon the worker classification and section 530 issues.

- (2) Excel Forms 4666, 4667 and 4668 are available on the Appeals Tax Computation Specialist website. Excel spreadsheet employment tax templates have been developed by Compliance and are available on the SB/SE Employment Tax website. A link to the templates can be found by clicking on "Spreadsheets Sharepoint" on the Appeals TCS website, and then looking for the "Employment Tax - SBSE" folder.
- (3) Exhibits in IRM 4.23.10, *Report Writing Guide for Employment Tax Examinations*:
  - Exhibit 4-23.10-1 - Form 4666 instructions for completion of the form.
  - Exhibit 4.23.10-2 - Form 4667 instructions for completion of the form.
  - Exhibit 4.23.10-3 - Form 4668 instructions for completion of the form.

8.7.16.25.1.4  
(10-29-2013)

**Schedules With  
Explanations of the  
Proposed Assessments**

- (1) Schedules with explanations of the proposed assessments to include in the Notice of Determination include:
  - a. Penalty schedules.
  - b. Schedules to show the computation of the numbers on Forms 4667 and/or 4668.
- (2) Penalty schedules include:
  - a. Explanatory paragraph for each penalty included on Forms 4667 and/or 4668.
  - b. Computation for each penalty included on Forms 4667 and/or 4668.
- (3) Schedules to show the computation of the numbers on Forms 4667 and/or 4668:
  - a. Any format that clearly identifies and explains the computations is acceptable.
  - b. See Exhibit 8.7.16-4 for sample formats.

8.7.16.25.1.5  
(10-29-2013)

**Publication 3953**

- (1) Publication 3953, **Questions and Answers About Tax Court Proceedings for Determination of Employment Status Under IRC 7436**, advises the taxpayers of the opportunity to seek Tax Court review and provides information on how to do so. Publication 3953 contains additional information and must always be sent to the taxpayer as an enclosure with the Notice of Determination.
- (2) Publication 3953 is available at the Electronic Publishing Forms Catalog website.

8.7.16.25.2  
(10-29-2013)

**Bankruptcy Procedures  
and IRC Section 7436  
Notices**

- (1) Bankruptcy proceedings - If the taxpayer is a debtor in bankruptcy, the automatic stay provision (i.e., 11 U.S.C. 362(a)(8)), precludes "the commencement or continuation of a proceeding before the United States Tax Court."
- (2) Thus, the taxpayer may not file a petition contesting the Service's "Notice of Determination of Worker Classification" without first obtaining relief from the "automatic stay" in bankruptcy court. Publication 3953 contains language advising the taxpayer of this fact.



- (3) However, the Service is permitted to issue a Notice of Determination while the “automatic stay” is in effect and should do so to prevent expiration of the statute of limitations on assessment, which continues to run during the bankruptcy proceeding.

8.7.16.25.3  
(10-01-2015)  
**Issuing the IRC 7436  
Notice of Determination**

- (1) When issuing the IRC 7436 Notice, APS will follow the same steps used to issue a statutory notice of deficiency. See IRM 8.20.6.29, *IRC 7436 Notice of Determination Issuance*, and IRM 8.20.6.9.4, *Appeals Issued Statutory Notices of Deficiency (SND)*, for additional information.

8.7.16.26  
(10-01-2015)  
**Closing Employment Tax  
Cases**

- (1) If all issues are conceded by the taxpayer, prepare the usual Form 5402, including an Appeals Case Memo and provide the settlement computations.
- (2) If the case is to be closed on the basis of full or partial concession by the taxpayer with respect to past periods with workers as employees, include in the file a closing agreement and/or a copy of Form 941/Form 940 filed for the employees at issue.
- (3) Do not forget to keep the originating function aware of the settlement terms. A copy of Form 5402, *Appeals Transmittal and Settlement Memorandum*, should be sent to the respective Employment Tax Coordinator, when the case is closed.
- (4) The Internal Revenue Code contains various provisions for computing interest, including IRC 6205, **Special Rules Applicable to Certain Employment Taxes**, that allows for an interest-free adjustment under certain conditions. See IRM 20.2.12, **Interest, Employment Taxes**, for additional information.
  - a. For employment tax cases involving “restricted interest”, use Form 5402, *Appeals Transmittal and Case Memo*, to alert APS that the case needs a restricted interest computation. See IRM 8.6.2.2.3, **Using Form 5402 as an Alert**. Include on Form 5402 the “type of tax” and code section or applicable regulation authorizing the restriction of interest.
  - b. See IRM 8.17.6, *Interest Issues in Settlement Computations*, for additional information on restricted interest.

8.7.16.26.1  
(10-01-2015)  
**Agreed Cases**

- (1) Form 2504, *Agreement to Assessment and Collection of Additional Tax and Acceptance of Overassessment*, is used to obtain the taxpayer’s agreement to an employment tax underpayment or overassessment on issues other than worker classification or Section 530 relief. See Exhibit 4.23.10–5 instructions for completion of Form 2504.
- (2) Form 2504-S, *Agreement to Assessment and Collection of Additional Tax and Acceptance of Overassessment (including section 530 Statement)*, is used when other employment tax issues not related to worker classification and section 530 are adjusted and worker classification is not addressed. See Exhibit 4.23.10–6 instructions for completion of Form 2504–S.
- (3) Form 2504-AD, *Agreement to Assessment and Collection of Additional Tax and Offer of Acceptance of Overassessment*, is used when there is a need for more finality than that provided by execution of Form 2504, Form 2504-S or 2504-WC. The use of this form most often occurs when the settlement involves a partial concession by the government based on hazards of litigation. This form, as all other agreement or waiver forms ending in “AD” (for “Appeals

Division”), is only used by Appeals. This form, while not having the effect of a final closing agreement, precludes the reopening of the case except for fraud, malfeasance, concealment or misrepresentation of material fact, or an important mistake in mathematical calculation of the tax.

- (4) Form 2504-WC, *Agreement to Assessment and Collection of Additional Tax and Acceptance of Overassessment in Worker Classification Cases*, is used for worker classification and Section 530 issues either before or after a Notice of Determination of Worker Classification (NDWC) is issued to allow for immediate assessment of the tax liability or over assessment without waiting for the period to file a Tax Court to expire. It does not have the finality that a Form 2504-AD has, and the taxpayer may file a claim for refund (after paying the tax) if he/she believes a refund is due.

**Note:** See IRM 4.23.10.12.11, *Form 2504, Form 2504-S, and Form 2504-WC*, for additional information.

- (5) Form 906, *Specific Matters Closing Agreement*, is used most often when a settlement involving prospective treatment of workers is obtained. Such a settlement usually provides for future compliance with an employer/employee determination. It may also include a determination providing for the non-assertion of employment taxes during intervening periods. In such situations, a closing agreement which spells out the terms of the settlement may be desirable. See IRM 8.13.1, **Processing Closing Agreements in Appeals**, for sample closing agreements involving worker classification issues. If a taxpayer is represented by another person with Power of Attorney, the closing agreement is signed by the taxpayer - unless the Form 2848 specifically allows the representative authority to bind the taxpayer for other related tax periods.
- (6) Decision/Stipulation Document is the agreement form for docketed cases. This is used whether the settlement is for no change to the reported liability, additional tax due from the taxpayer, or a refund due the taxpayer. A Stipulation Document may or may not be needed, depending on the circumstances, and is often used in overpayment situations. The Decision Document is prepared according to U.S. Tax Court requirements and is signed by the taxpayer or his authorized representative and the appropriate Counsel official as a representative of the Chief Counsel. After securing the signed Decision Document, forward it, along with a copy of the approved settlement reports, to Counsel to be reviewed and filed with the Tax Court. Standard format Decision Documents are available on ACDS, although employment tax settlements have unique provisions which may need Counsel's assistance with the required language to meet Tax Court rules.
- (7) Ensure a settlement computation is prepared if the settlement differs from that proposed in the examination report. IRM 8.7.16.7 for a discussion for preparing settlement computations.

8.7.16.26.2  
(10-01-2015)  
**What the ATE Must  
Prepare for an Unagreed  
Case**

- (1) Unagreed cases may require immediate assessment of the tax, issuance of a Notice of Determination of Worker Classification (NDWC), or transfer to Counsel for trial preparation, depending on the type of case.
- (2) For unagreed employment tax cases, the following forms are required:
  - a. Customized Form 5402, Appeals Transmittal and Case Memo
  - b. Appeals Case Memo (ACM)
  - c. Settlement Computation

**Note:** See IRM 8.6.2, *Appeals Case Memo Procedures*, for guidance on preparing ACMs.

- (3) The tax determined by the ATE will be forwarded for assessment unless the tax is attributable to reclassifying workers, in which case a NDWC must be issued. See IRM 8.7.16.26.2.1. The taxpayer may litigate other types of employment tax cases, as well as those involving worker classification issues, in either the United States District Court or the United States Court of Federal Claims. Before taxpayers can initiate suit in either of these courts, they will have to pay, at a minimum, the employment tax assessment attributable to one employee for any one quarter and file a claim for refund of the tax. Once the claim for refund is denied or 6 months elapse without any action by the Service, the taxpayer may initiate suit. Generally, Employment taxes are not subject to the jurisdiction of the U.S. Tax Court. However, self-employment taxes, Section 530 relief issues, and worker classification issues are subject to the jurisdiction of the U.S. Tax Court.

8.7.16.26.2.1  
(10-29-2013)  
**Unagreed Section 530  
and/or Worker  
classification Cases**

- (1) For unagreed Section 530 and/or worker classification cases the procedures are as follows:
  - a. Appeals issues a Notice of Determination of Worker Classification (NDWC) as provided in IRC 7436 to the taxpayer employer (if one has not previously been issued).
  - b. The tax may not be assessed until the U.S. Tax Court proceeding is final or the taxpayer fails to petition the U.S. Tax Court within the 90 days allowed by law or the taxpayer signs the waiver Form 2504-WC enclosed with the report.
  - c. If Appeals is considering the case in docketed status, the case is forwarded to Counsel for trial preparation.
- (2) IRM 8.7.16.14 discusses when the case contains both type of issues: non-worker classification/Section 530 issues and worker classification/Section 530 issues. Prepare separate reports ensuring the assessment required for any non-worker reclassification/Section 530 issues is made before the assessment statute expires. The issuance of the Notice of Determination of Worker Classification (NDWC) does not suspend the statute on non-worker classification/Section 530 issues.

8.7.16.26.2.2  
(10-01-2015)  
**Closing the Case as No  
Change**

- (1) If the ATE determines the taxpayer is not liable for the proposed employment tax, prepare a Form 5402 and ACM.
- (2) Except for docketed cases, the taxpayer does not need to sign any reports.
- (3) Prepare and mail to the taxpayer and/or Power of Attorney a closing letter, stating that the settlement has resulted in "no change" from the tax previously reported.

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Exhibit 8.7.16-1 (10-01-2015)

Form 941 - Employment Tax Examination Changes

<b>Form 3610</b>	<b>Department of the Treasury - Internal Revenue Service</b>			<b>Symbols:</b>
	<b>AUDIT STATEMENT</b>			<b>XX:XX</b>
Name of Taxpayer XYZ Corporation, Inc.			SSN/EIN:	Date Prepared:
Kind of Tax Employment Tax - Form 941				Docket Number:
	Increase or decrease in Tax and Penalties			
Tax Period Ended	Tax	Addition to Tax Section 6656	Penalty Section IRC 6662(a)	
3/31/96	5,757.94	251.59	1,151.59	
6/30/96	700.93	21.53	140.19	
9/30/96	889.39	15.71	177.88	
12/31/96	5,558.95	161.57	1,111.79	
Totals	12,907.21	450.40	2,581.45	

Interest for (Tax Period Ended) will be computed under \_\_\_\_\_ of the Internal Revenue Code.

The amount shown above for (Tax Period Ended) does not take into account a payment of \$\_\_\_\_\_ made on (date).

Form 3610

## Exhibit 8.7.16-2 (10-01-2015)

## Form 885-T, FICA Tax on Tip Income

Form <b>885-T</b> (Rev. February 1991)	Department of the Treasury Internal Revenue Service <b>Adjustment of Social Security Tax on Tip Income Not Reported to Employer</b>		Schedule Number <b>1</b>
Name of Taxpayer (Husband and wife, if joint return filed) <b>John Smith</b>			Tax Year Ended <b>12/31/2013</b>
Name of Person Receiving Tip Income <b>John Smith</b>		Social Security Number <b>000 00 0000</b>	
1. Tip income reported on Form 4137 (line 5) or as previously adjusted			<b>0.00</b>
2. Increase (decrease) in tips not reported to employer. (Note: Do not include tips not reported because the total was less than \$20 in a calendar month)			<b>3,000.00</b>
3. Total tip income not reported to employer			<b>3,000.00</b>
4. Largest amount of wages (including tips) subject to social security tax		<b>113,700.00</b>	
5. (a) Total social security wages shown on all Forms W-2 or railroad retirement compensation shown on a statement (include covered wages received as an agricultural or household employee)		<b>28,000.00</b>	
(b) Amount on line 9 of the Form 4137 filed with return, if any			
6. Balance (Subtract total of lines 5(a) and 5(b) from line 4)			<b>85,700.00</b>
7. Increase (decrease) in tips subject to social security tax (Enter smaller of line 2 or 6)			<b>3,000.00</b>
8. Social security tax adjustment (Multiply line 7 by the applicable rate) ( <b>7.65%</b> )			<b>229.50</b>
9. 50% penalty for failure to report tips (section 6652(b) of the Internal Revenue Code)			<b>114.75</b>
10. Total amount due (Add lines 8 and 9)			<b>344.25</b>

SCHEDULE T-A (Form 885-T) Department of the Treasury Internal Revenue Service		<b>Schedule for Social Security Tax Adjustment of Tip Income not Reported to Employer</b>		<b>19</b>
A Increase (Decrease) in Tip Income (from line 7 above) \$			FOR SSA USE ONLY	
B	Occupation	Social Security Number of Person Named Below	D- Amount of Tip Income From Line 5(b)	
Name of person (as shown on Social Security Card) who received tip income (Please print or type)			<input type="checkbox"/> Check here if zero or no entry on line 5(b)	
C	Address (Number and Street)		Re-File Number	
City, State, and ZIP Code			E-	

Cat. No. 20800A

Form 885-T (Rev. 2-91)

Exhibit 8.7.16-3 (10-01-2012)

Completed Form 885-E, Schedule for FICA Tax Adjustment of Wages Not Previously Reported

**Completed Form 885-E**  
**Schedule for FICA Tax Adjustment of Wages Not Previously Reported**

				2000
Wages received where no FICA Tax was withheld (Line 7)			Employer's	
<b>A</b>	(1) Jan.-Feb.-Mar.	(a) Social Security	\$ 6,250.00	<b>Joe's Construction</b> Name  00000 Downtown Avenue Address (Number and Street)  Los Angeles, CA 90000 City, State, and Zip Code  <b>EIN:</b> XX-XXXXXXX
		(b) Medicare	\$ 6,250.00	
	(2) April-May-June	(a) Social Security	\$ 6,250.00	
		(b) Medicare	\$ 6,250.00	
	(3) July-Aug.-Sept.	(a) Social Security	\$ 6,250.00	
		(b) Medicare	\$ 6,250.00	
	(4) Oct.-Nov.-Dec.	(a) Social Security	\$ 6,250.00	
		(b) Medicare	\$ 6,250.00	
	(5) Total of Lines	(a) through 4(a)	\$ 25,000.00	
		(b) through 4(b)	\$ 25,000.00	
<b>B</b>	Occupation:	Social Security Number of Person Named Below	xxx-xx-xxxx	For SSA Use Only
	Construction			
<b>C</b>	Print or type name of person who received these wages			
	John Smith			
	Address (Number and Street)			
	123 Main Street			
City, State, and Zip Code				
Anywhere, USA 00000				
				Re-file Number
Form 885-E (Rev. 2-94)		Cat. No. 169251		Department of the Treasury-Internal Revenue Service

**Worksheet for FICA Tax Adjustments**

1. Maximum taxable FICA wages by law for this year	(a) Social Security	\$ 76,200.00
	(b) Medicare	Unlimited
2. Total FICA wages shown on all Forms W-2 (include covered wages received as agriculture or household employee and any RRTA wages).	(a) Social Security	\$ -
	(b) Medicare	\$ -
3. Report amount of tips shown on all Forms W-2 (include unreported tips reported on Form 4137) or as corrected on examination reports.	(a) Social Security	\$ -
	(b) Medicare	\$ -
4. Total wages for which FICA tax has been previously paid (Total of 2 & 3)	(a) Social Security	\$ -
	(b) Medicare	\$ -
5. Balance (Line a. less 4a. for Social Security). (Line 1 b. less 4b. for Medicare.)	(a) Social Security	\$ 76,200.00
	(b) Medicare	Unlimited
6. Total wages received for which no FICA tax was withheld by the payer.	(a) Social Security	\$ 25,000.00
	(b) Medicare	\$ 25,000.00
7. Line 6 or line 5, whichever is smaller.	(a) Social Security	\$ 25,000.00
	(b) Medicare	\$ 25,000.00
8. FICA tax adjustment. Multiply the amount on line 7 by the applicable rate.	(a) Social Security	\$ 1,550.00
	(b) Medicare	\$ 362.50
9. Total adjustment. Add line 8a. and line 8b.	(a) Social Security	\$ 1,912.50
	(b) Medicare	

Form 885-E (Rev. 2-94) Cat. No. 169251 Department of the Treasury-Internal Revenue Service

**Exhibit 8.7.16-3 (Cont. 1) (10-01-2012)****Completed Form 885-E, Schedule for FICA Tax Adjustment of Wages Not Previously Reported**

The instructions for completing Form 885-E are as follows:

Part A — Enter amounts received during the respective periods indicated. If unable to accurately determine amounts per period, the amount of previously unreported wages should be deemed to be earned equally over the periods the worker performed services for the payer.

Part B — Enter the occupation and SSN of the person receiving these previously unreported wages.

Part C — Self-explanatory.

Employer's Information — Enter name and address of employer paying the wages and, if known, employer identification number.

For SSA Use Only — Make no entry in this space.

Re-file Number — Make no entry in this space.



**Exhibit 8.7.16-4 (10-01-2012)**  
**IRC 7436 Notice of Determination**

***Explanation of Adjustments - Attachment to Form 4668***

XYZ Company	Attachment to Form 4668			
Social Security and Medicare Tax Computations				
Type of Tax	03/31/02	06/30/03	09/30/02	12/31/02
Social Security				
Old Age, Survivor, Dis-ability Ins.	13,500.00	19,913.00	8,100.00	14,340.00
Rate	12.40%	12.40%	12.40%	12.40%
Total - Table 2	1,674.00	2,469.21	1,004.40	1,778.16
	=====	=====	=====	=====
Medicare:				
Hospital Insurance	13,500.00	19,913.00	8,100.00	14,340.00
Rate	2.90%	2.90%	2.90%	2.90%
Total - Table 2	391.50	577.48	234.90	415.86
	=====	=====	=====	=====
Total Social Security and Medicare Tax shown on Form 4668	2,065.50	3,046.69	1,239.30	2,194.02

***Explanation of Adjustments - Exhibit A***

XYZ Company						Exhibit A
Employee List - 2002						
Name	Type of Wages	First Quarter	Second Quarter	Third Quarter	Fourth Quarter	Yearly Totals
Jane Taxpayer	FUTA	1,500.00	3,500.00	2,000.00	0.00	7,000.00
	Social Security	1,500.00	3,500.00	5,300.00	2,000.00	12,300.00
	Medicare	1,500.00	3,500.00	5,300.00	2,000.00	12,300.00
	Withholding	1,500.00	3,500.00	5,300.00	2,000.00	12,300.00
John Taxpayer	FUTA		3,413.00		3,400.00	6,753.00

**Exhibit 8.7.16-4 (Cont. 1) (10-01-2012)**  
**IRC 7436 Notice of Determination**

XYZ Company				Exhibit A		
Employee List - 2002						
Jane Smith	Social Security		3,413.00		3,400.00	6,753.00
	Medicare		3,413.00		3,400.00	6,753.00
	Withholding		3,413.00		3,400.00	6,753.00
	FUTA			2,800.00	4,200.00	7,000.00
	Social Security			2,800.00	9,000.00	11,800.00
	Medicare			2,800.00	9,000.00	11,800.00
	Withholding			2,800.00	9,000.00	11,800.00
John Smith	FUTA	7,000.00				7,000.00
	Social Security	12,000.00	13,000.00			25,000.00
	Medicare	12,000.00	13,000.00			25,000.00
	Withholding	12,000.00	13,000.00			25,000.00
2002 Totals	FUTA	8,500.00	6,913.00	4,800.00	7,540.00	27,753.00
	Social Security	13,500.00	19,913.00	8,100.00	14,340.00	55,853.00
	Medicare	13,500.00	19,913.00	8,100.00	14,340.00	55,853.00
	Withholding	13,500.00	19,913.00	8,100.00	14,340.00	55,853.00

***Schedule of Adjustments - Exhibit B, page 1 of 3***

<b>XYZ Company</b>	<b>Exhibit B</b> <b>page 1 of 3</b>
IRC Section 6656 – Failure to Make Deposit of Taxes	
<b>FUTA</b>	
Since you did not make any federal tax deposits for the tax year ended December 31, 2002, and you have not shown that such failure was due to reasonable cause, 10% of the underpayment in federal unemployment tax is added as provided by Section 6656 of the Internal Revenue Code. See page 2 of Exhibit B for computations. FICA	
<b>FICA</b>	

**Exhibit 8.7.16-4 (Cont. 2) (10-01-2012)**  
**IRC 7436 Notice of Determination**

**XYZ Company**

**Exhibit B**  
**page 1 of 3**

Since you did not make any federal tax deposits for the tax periods ended March 31, 2002, June 30, 2002, September 30, 2002, and December 31, 2002, and you have not shown that such failure was due to reasonable cause, 10% of the underpayment in federal employment tax for Social Security and Medicare is added as provided by Section 6656 of the Internal Revenue Code. See page 2 of Exhibit B for computations.

**IRC Section 6651(a)(1) - Failure to File Penalty**

**FUTA**

Since you did not file your returns for the tax year ended December 31, 2002 within the time prescribed by law, and you did not show that such failure was due to reasonable cause and not due to willful neglect, a failure to file penalty of 5 percent is added to the tax for each month or part of a month (but not to exceed a total of 25 percent) for which your returns were late. See Section 6651(a)(1) of the Internal Revenue Code. In addition, interest is computed on the penalty from the due date of the return (including any extensions). See page 2 of Exhibit B for computations.

**FICA**

Since you did not file your returns for the tax periods ended March 31, 2002, June 30, 2002, September 30, 2002, and December 31, 2002 within the time prescribed by law, and you did not show that such failure was due to reasonable cause and not due to willful neglect, a failure to file penalty of 5 percent is added to the tax for each month or part of a month (but not to exceed a total of 25 percent) for which your returns were late. See Section 6651(a)(1) of the Internal Revenue Code. In addition, interest is computed on the penalty from the due date of the return (including any extensions). See page 2 of Exhibit B for computations.

***Schedule of Adjustments - Exhibit B, page 2 of 3***

**XYZ Company**

**Exhibit B**  
**Page 2 of 3**

**Computation of IRC Section 6651(a)(1) - Failure to File Penalty**

FUTA				<u>2002</u>
Increase in Tax				1,720.69
Rate				<u>.25</u>
IRC 6651(a)(1)				430.17
				===
FICA	<u>200203</u>	<u>200206</u>	<u>200209</u>	<u>200212</u>
Increase in Tax	5,710.50	8,423.20	3,426.30	6065.82

**Exhibit 8.7.16-4 (Cont. 3) (10-01-2012)**  
**IRC 7436 Notice of Determination**

<b>XYZ Company</b>					<b>Exhibit B</b>
					<b>Page 2 of 3</b>
<b>Computation of IRC Section 6651(a)(1) - Failure to File Penalty</b>					
Rate		<u>.25</u>	<u>.25</u>	<u>.25</u>	<u>.25</u>
IRC 6651(a)(1)	1,427.63	2,105.80	856.58	1,516.46	
	===	===	====	=====	
<b>Computation of IRC Section 6656 - Failure to Deposit Penalty</b>					
FUTA					<u>2002</u>
Increase in tax					1,720.69
Rate					<u>.10</u>
IRC 6656					172.07
					=====
FICA	<u>200203</u>	<u>200206</u>	<u>200209</u>	<u>200212</u>	
FICA Tax	2,065.50	3,046.69	1,239.30	2,194.02	
Rate	<u>.50</u>	<u>.50</u>	<u>.50</u>	<u>.50</u>	
Employer's Share	1,032.75	1,523.35	619.65	1,097.01	
Rate	<u>.10</u>	<u>.10</u>	<u>.10</u>	<u>.10</u>	
IRC 6656	103.28	152.33	61.97	109.70	
	===	===	===	=====	

***Schedule of Adjustments - Exhibit B, page 3 of 3***

<b>XYZ Company</b>					<b>Exhibit B</b>
					<b>Page 3 of 3</b>
<b>Penalty Totals on Table 2 of Letter 3523</b>					
<b>Total IRC 6651(a)(1) Penalties:</b>					
	<u>200203</u>	<u>200206</u>	<u>200209</u>	<u>200212</u>	<u>Totals</u>
FUTA				430.17	430.17
FICA	<u>1,427.63</u>	<u>2,105.80</u>	<u>856.58</u>	<u>1,516.46</u>	<u>5,906.47</u>

Exhibit 8.7.16-4 (Cont. 4) (10-01-2012)  
IRC 7436 Notice of Determination

XYZ Company					Exhibit B Page 3 of 3
Penalty Totals on Table 2 of Letter 3523					
Total IRC 6651(a)(1) Penalties:					
Table 2 Totals	1,427.63 =====	2,105.80 =====	856.58 =====	1,516.46 =====	6,336.64 =====
Total IRC 6656 Penalties:					
	<u>200203</u>	<u>200206</u>	<u>200209</u>	<u>200212</u>	<u>Totals</u>
FUTA				172.07	172.07
FICA	<u>103.28</u>	<u>152.33</u>	<u>61.97</u>	<u>109.70</u>	<u>427.28</u>
	<u>103.28</u>	<u>152.33</u>	<u>61.97</u>	<u>281.77</u>	<u>599.35</u>
	=====	=====	=====	=====	=====
Penalty Totals on Form 2504-WC and Form 4666					
FUTA				<u>200212</u>	<u>Totals</u>
IRC 6651(a)(1)				430.17	430.17
IRC 6656				<u>172.07</u>	<u>172.07</u>
Total				<u>602.24</u>	<u>602.24</u>
				=====	=====
FICA	<u>200203</u>	<u>200206</u>	<u>200209</u>	<u>200212</u>	<u>Totals</u>
IRC 6651(a)(1)	1,427.63	2,105.80	856.58	1,516.46	5,906.47
IRC 6656	<u>103.28</u>	<u>152.33</u>	<u>61.97</u>	<u>109.70</u>	<u>427.28</u>
Totals	<u>1,530.91</u>	<u>2,258.13</u>	<u>918.55</u>	<u>1,626.16</u>	<u>6,333.75</u>
	=====	=====	=====	=====	=====

