



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

March 15, 2021

Control No. AP-08-0321-0007
Expiration Date: 03/22/2022
Affected IRMs: 8.7.20 (new), 8.21.3

MEMORANDUM FOR APPEALS EMPLOYEES

FROM: Christopher J. Larsen /s/ *Christopher J. Larsen*
Acting Director, Case and Operations Support

SUBJECT: Reissuance of Shared Responsibility Payment (SRP) Instructions to Appeals Technical Employees (ATE), and Account and Processing Support (APS) Tax Examiners (TE)

This memorandum reissues procedural guidance in AP-08-0319-0004, Shared Responsibility Payment (SRP) Instructions to Appeals Technical Employees (ATE), and Account and Processing Support (APS) Tax Examiners (TE), issued on March 22, 2019, for ATEs who work income tax cases with related SRP issues, as well as for APS TEs that card-in and close these cases. Please ensure that this information is distributed to all affected employees within your organization.

Purpose: This memorandum provides procedural guidance to Appeals employees to assist in determining whether the SRP rules apply to cases in ATE inventory, statutes, carding-in, and closing cases that have SRP as an issue.

Background/Source(s) of Authority: In 2010, The Patient Protection and Affordable Care Act, P.L. 111-148 (commonly known as the Affordable Care Act or ACA), added section 5000A to the Internal Revenue Code. IRC 5000A requires that, beginning in 2014, individuals must have qualifying health coverage (called minimum essential coverage or MEC) for each month, qualify for a health coverage exemption, or make a shared responsibility payment (SRP) with their income tax returns.

The SRP is assessed and collected in the same manner as an assessable penalty under IRC Chapter 68, Subchapter B and is **not** subject to deficiency procedures. See IRC 5000A(g)(1). In collecting the SRP, the IRS cannot file a Notice of Federal Tax Lien nor levy on the taxpayer's property. See IRC 5000A(g)(2)(B).

The amount of the SRP was reduced to zero by the Tax Cuts and Jobs Act (TCJA) of 2017, P.L. 115-97, effective with respect to health care coverage status for months beginning after December 31, 2018.

Affected Appeals Employees:

- **Account and Processing Support (APS)** employees who card in and process SRP cases
- **Appeals Technical Employees (ATEs)** who work SRP cases

Procedural Change: Cases with SRP as an issue will be handled following the guidance included with this memorandum.

Effect on Other Documents: This guidance will be incorporated into new IRM 8.7.20, Appeals Cases Involving IRC 5000A Shared Responsibility Payment (SRP), and IRM 8.21.3, Appeals Technical Employees Statute Responsibility, by the expiration date of this memorandum.

Effective Date: The guidance is effective as of the date of this memorandum and supersedes AP-08-0319-0004, Shared Responsibility Payment (SRP) Instructions to Appeals Technical Employees (ATE) and Account and Processing Support (APS) Tax Examiners (TE).

Contact: Appeals employees should follow existing procedures to elevate questions through their management chain and follow established procedures on [How to Contact an Analyst](#).

Attachment:
SRP instructions to ATEs

Distribution:
cc: www.irs.gov

8.7.20.X.X (MM-DD-YYYY)**Shared Responsibility Payment (SRP) Issues in Appeals**

- (1) These procedures apply to all new income tax (MFT 30) cases received in Appeals on or after the effective date of this Interim Guidance.
- (2) SRP (MFT 35) issues will only be addressed if Compliance made an adjustment to the SRP.
 - If the SRP is not self-reported on the tax return and Compliance was silent on the issue, this would be considered a new issue and not raised by Appeals.
 - If the SRP is self-reported on the tax return and Compliance is silent on the issue, Appeals will not raise it even as a potential computational adjustment.
- (3) To help determine if Compliance raised SRP as an issue, there should be a signed Form 8278, Assessment and Abatement of Affordable Care Act (ACA) Assessable Payments, in the SRP case file as well as an SRP lead sheet.
- (4) If there is no signed Form 8278 in the case file, follow procedures in IRM 8.2.1.5(2)(f) for returning cases to Compliance.
- (5) If Compliance assessed the SRP, Form 3198, Special Handling Notice for Examination Case Processing, will contain a notation that the SRP has been assessed.
- (6) Changes made to income, filing status and dependent exemptions would be indicators that the SRP may be affected. Please see SB/SE's [5000A - Individual Shared Responsibility Payment Field/Office Exam User Guide](#) for more information and what will be included in an SRP file sent to Appeals.

8.7.20.X.X (MM-DD-YYYY)**New Issue Raised by Taxpayer**

- (1) If a taxpayer raises SRP as a new issue on a non-docketed case, follow the procedures in IRM 8.6.1.7.4, Taxpayer Raises New Issue.
- (2) If a taxpayer raises SRP as a new issue on a docketed case, follow the procedures in IRM 8.4.1.9.3, New Issues in Docketed Cases.

8.7.20.X.X (MM-DD-YYYY)**Statutes**

- (1) The statute of limitations on assessment for an SRP generally matches the statute date of the income tax return on which the shared responsibility payment is reported. See Treas. Reg. § 1.5000A-5.
- (2) Compliance will send the SRP case to Appeals along with the related Form 1040 case if there are at least 365 days remaining on the statute. Compliance will not assess the SRP when there are at least 365 days on the statute. If there are less than 365 days on the SRP statute, Compliance will assess the SRP, and a copy of the SRP file should be included with the Form 1040 case.
- (3) Non-docketed cases will either have a live SRP statute (if the SRP is not assessed) or a statute code showing the SRP was assessed.
- (4) The issuance of a statutory notice of deficiency **does not** suspend the statute of limitations on assessment for the SRP.
- (5) If the SRP has not been assessed by Compliance, the procedures depend upon whether there is a signed Form 8278 in the case file.
 - If there is a Form 8278 signed by the Group Manager in the case file and the SRP has not been assessed, upon receipt, take immediate action to have it assessed.
 - If there is no signed Form 8278 in the case file, return the SRP (non-docketed) case file to Compliance per IRM 8.2.1.5(2)(f).
- (6) Form 872, Consent to Extend the Time to Assess Tax, can be used to extend the statute of limitations on assessment for both the tax on an income tax return and the SRP only if the Form 872 explicitly includes the SRP.
- (7) When securing a statute extension on an income tax return, secure a statute extension for the SRP. When preparing a Form 872, **type in the words “income tax” and “Section 5000A Shared Responsibility Payment” under “type of tax”** to make clear that the taxpayer and the IRS agree to extend the statute for both the income tax and the SRP.

8.7.20.X.X (MM-DD-YYYY)**Verification of Case Summary Card**

- (1) During the initial case review, verify that the SRP was carded in and is properly controlled in ACDS. Please see IRM 8.2.1.4, Receipt of New Assignment by an ATE, or IRM 8.4.1.8, Preliminary Review of Assigned Docketed Case.

- (2) Verify the following information on the case summary cards (CSC):
- Typically, the income tax and the SRP case will be carded in under **one** WUNO, but with different MFTs. When an SRP MFT 35 case file is associated with a docketed or non-docketed income tax case, APS will card in the SRP tax period(s) under a separate CSC, MFT 35, within the MFT 30 WUNO.
 - ACDS will show a CSC for the MFT 30 (carded per normal procedures for the type of case) and a separate CSC with the same tax period in YYYYMM format but definer "S" and MFT 35 for the SRP issue
 - Feature code "AC" is added to both MFT 30 and MFT 35
 - "Type" should be "I" for both MFT 30 and MFT 35
 - "AIMS" should equal "E" for Exempt (MFT 35 will never have an open AIMS control)
 - "SND" should equal "N" (SRP cannot be included on a notice of deficiency)
 - "BODCd" should have the same indicator as the MFT 30 tax period
 - SRP will be reported in the proposed penalty column on the CSC
- (3) Although rare, there may be instances when an MFT 35 account needs to be mirrored using MFT 65. If mirroring is required, Compliance may or may not have established the MFT 65. Please see IRM 21.6.8, Individual Tax Returns, Split Spousal Assessments, for more information.
- (4) MFT 65 is created when the module meets one or more of the following conditions:
- Each spouse is liable for different amounts
 - Each spouse has different penalty and/or interest suspension periods
 - Each spouse has a different statute of limitations
- (5) An MFT 65 requires a related record on ACDS with the same WUNO as the key case to control the MFT 65 for the separate spouse.

8.7.20.X.X (MM-DD-YYYY)

Agreed Non-Docketed Form 1040 Cases

- (1) Send a request to Tax Computation Specialist (TCS) for computations of the MFT 30 and MFT 35 following normal procedures for requesting TCS services. See IRM 8.2.1.8, Requesting Work from Tax Computation Specialist. In addition, provide the following information for TCS to compute the SRP:
- Copy of original tax return
 - Date of birth of any dependents (if applicable)
 - Household income (including income of those dependents whose income meets the income tax return filing threshold)

- Months during the taxable year the taxpayer was not covered by insurance including dependents (if applicable)
 - Form 1095-A, Health Insurance Marketplace Statement (if applicable)
 - Form 1095-B, Health Coverage (if applicable)
 - Form 1095-C, Employer-Provided Health Insurance Offer and Coverage (if applicable)
 - Form 8965, Health Coverage Exemptions (if applicable)
- (2) Follow normal procedures to obtain a signed agreement form. See IRM 8.6.4, Reaching Settlement and Securing an Appeals Agreement Form.
- (3) Complete a customized Form 5402, Appeals Transmittal and Case Memo, for the MFT 30 income tax case following normal procedures. The MFT 35 must be listed as a reference return under “related taxpayers.”
- (4) Complete a second customized Form 5402 for the MFT 35 tax year(s) and include the following instructions to Account and Processing Support (APS) in the “Special Features” section:
- This case includes an MFT 35 SRP adjustment. Please assess the SRP amount as shown by the computation in the file.”
 - If the ATE determines that an SRP adjustment is not required, the ATE will include the following statement: “No SRP MFT 35 adjustment is required for tax year(s) _____.”
 - The MFT 30 must be listed as a reference return under “related taxpayers.”
 - Follow normal procedures for all other Form 5402 entries. The following Closing Codes should be used:
 - 14 – Fully Sustained
 - 15 – Not Sustained
 - 16 – Part Sustained
- (5) Follow normal case approval and closing procedures.

8.7.20.X.X (MM-DD-YYYY)

Unagreed Non-Docketed Form 1040 Cases

- (1) Send a request to TCS for SND preparation, providing the same documents as listed in 8.7.20.X.X, Agreed Non-docketed Form 1040 Cases, above. TCS will recalculate MFT 30 and MFT 35 SRP.
- (2) The ATE **must** include a request to APS on the SRP Form 5402 to have the SRP assessed since the SRP statute is not protected by the issuance of a SND. Letter

6012, Appeals Shared Responsibility Payment Closing Letter, can be used for unagreed SRP cases.

Note: SRP cases are not subject to deficiency procedures.

- (3) Follow normal procedures for all other Form 5402 entries. The following Closing Codes should be used:
- 14 – Fully Sustained
 - 15 – Not Sustained
 - 16 – Part Sustained

8.7.20.X.X (MM-DD-YYYY)

Agreed Docketed Form 1040 Cases

- (1) Send a request to TCS for computations with the same information as shown in 8.7.20.X.X, Agreed Non-docketed Form 1040 Cases, above.
- (2) If the petitioner is liable for the SRP, the Counsel attorney will prepare the decision document, and add a stipulated paragraph with special SRP language, below the line.
- (3) The SRP Form 5402 will include a note to APS to adjust the already assessed SRP, if needed.

8.7.20.X.X (MM-DD-YYYY)

Unagreed Docketed Form 1040 Cases

- (1) Process the income tax (MFT 30) case for trial preparation under existing trial preparation procedures.
- (2) If the SRP was previously assessed include the following statement to Counsel in the “Special Features” section of Form 5402: **“NOTE TO COUNSEL: There is a related MFT 35 SRP assessment, which may be affected by the Tax Court’s decision in this case. Prior to closing the case to Appeals based on the decision, request an SRP computation from TCS following Counsel’s existing procedures for tax computation requests from Appeals.”**