



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

November 9, 2020

Control No: AP-08-1120-0022
Expiration Date: 11/9/2022
Affected IRM: 8.20.6

MEMORANDUM FOR: Director, Account & Processing Support (East)
Director, Account & Processing Support (West)

FROM: Steven M. Martin /s/ *Steven M. Martin*
Director, Appeals Case & Operations Support

SUBJECT: Interim Guidance Concerning Use of Form 870-AD When
Counsel Accepts a Delinquent Return in Tax Court

This memorandum provides guidance for Account and Processing Support (APS) staff who perform interim adjustments. The memorandum provides clarification of when Form 870-AD must accompany Counsel's request to perform an interim adjustment after securing a delinquent return in a Tax Court proceeding challenging a Substitute for Return (SFR).

Purpose: This memorandum serves to provide guidance for determining if Form 870-AD is required to perform an interim adjustment requested by Counsel relating to a delinquent return accepted as a basis for settlement.

Background: A petitioning taxpayer may submit a delinquent return to the Counsel Attorney for consideration in a Tax Court petition challenging a Substitute for Return (SFR). This may occur to allow for a change in filing status per IRC 6013(b)(3)(A)(i) or (iii). Counsel determines whether to accept the return as a basis for settlement and sends to Appeals for interim adjustment prior to entering a decision document.

Procedural Change: The need for Form 870-AD should be determined based on the guidance that follows this memorandum and is effective for all cases in Appeals for which an "ACAP" date has been entered.

Effect on Other Documents: This guidance is effective beginning November 9, 2020 and will be incorporated into the IRM within two years of the date of this memorandum.

Contact: Questions concerning this guidance may be directed to Appeals Sr. Analyst Phillip J. Krell. Appeals employees should elevate questions through their management chain following established procedures on [How to Contact an Analyst](#).

Attachment:

Revisions to Appeals' IRM

cc: www.irs.gov

Revisions to Appeals' IRM:

8.20.6.12.1 (MM-DD-YYYY)

Counsel Receives and Accepts Delinquent Return - Interim Adjustment Procedures

(3) When Counsel **accepts the return**, they will take the following actions:

- a) Verify that the delinquent return includes the correct name(s) and TIN(s) for the taxpayer(s).
- b) Verify that the delinquent return is signed and dated by the taxpayer(s).
- c) If the amount to be assessed differs from the amount or type of tax shown on the return, then for any joint taxpayer who is not also a party to the Tax Court Case, Counsel will secure signed Form 870-AD, Offer to Waive Restrictions on Assessment and Collection of Tax Deficiency and to Accept Overassessment, to reflect the specified amount. This might occur in rare situations when the petitioner's decision document increases the deficiency beyond the return amount or includes penalties other than automatically calculated penalties (such as Failure to File, Failure to Pay, etc.). Counsel will determine if Form 870-AD is required.
- d) Prepare the most recent version of Form 3608, Counsel Request For Tax Computation Work.
- e) Upload the return, Form 3608, Form 870-AD (if applicable) and Statutory Notice of Deficiency (if not already attached to the petition) to the Appeals Case Support Intake list.

(6) Upon receiving the PEAS assignment, the APS TE will access ACDS attachments listed below:

- Form 3608
- Form 5403 Instructions
- Delinquent Return (APS will associate this with Form 5403 CC: AMCLSF adjustment source document)
- Signed Form 870-AD (if applicable) to identify the "waiver date" for authority to assess the original tax for the joint taxpayers on their MFT 30 Married Filing Joint account when only one taxpayer petitioned the USTC.