



LARGE BUSINESS AND
INTERNATIONAL DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, DC 20224

November 17, 2020

Control Number: LB&I-04-1120-0020

Expiration Date: 11/17/2022

Impacted IRM: 4.61.7, 25.6.23

MEMORANDUM FOR ALL EMPLOYEES ASSIGNED TO IRC 965 EXAMINATIONS

FROM: John V. Cardone *Is/ John V. Cardone*
Assistant Deputy Commissioner Compliance Integration
Large Business and International Division

SUBJECT: Interim Guidance for Examinations with IRC 965 Issues - Statute
Considerations, Examination and Classification

The purpose of this memorandum is to provide guidance for employees (revenue agents and examiners) regarding special statute rules while conducting examinations with an IRC 965 transition tax issue identified.

Background/Source(s) of Authority: This memorandum provides additional guidance to employees regarding the IRC 965(k) six-year statute of limitations on assessment for returns with an IRC 965 transition tax. This guidance does not cover returns subject to the centralized partnership audit regime under Bipartisan Budget Act of 2015 (BBA) or TEFRA partnerships. Separate guidance will be issued for returns subject to BBA provisions and TEFRA partnerships. More specifically, this additional guidance:

- Covers cases with IRC 965 issues worked either within the IRC 965 Campaign, IRC Section 965 for Individuals Campaign or outside of these campaigns.
- Provides guidance to the field on the authority to allow the IRC 6501(a) three-year statute of limitations to expire on the portion of the taxpayer's income tax liability that is not covered by the IRC 965(k) six-year statute of limitations (that is, on the portion of the tax liability other than the taxpayer's IRC 965 net tax liability).
- Applies to all cases within the IRC 965 Campaign, IRC Section 965 for Individuals Campaign and any other cases where available information indicates that the taxpayer incorrectly calculated the IRC 965 net tax liability or failed to report an IRC 965 inclusion, deduction, or tax.

Procedural Change: The updated procedures are found on Attachments 1 and 2.

Effect on Other Documents: This guidance will be incorporated into IRM 4.61.7, Controlled Foreign Corporations, within two years of the date of this memo. Small Business/Self-Employed Division is currently revising IRM 25.6.23 (Examination Process-Assessment Statute of Limitations) to reflect this guidance.

Contact: For IRC 965 Campaign contact: Bharati.Shenoi@irs.gov. For the IRC Section 965 for Individuals Campaign contact: LBI.IIC.Fgn.Entities.ipn@irs.gov.

Attachments

Distribution: www.irs.gov

Attachment 1 – IG LB&I-04-1120-0020

IRM 4.61.7.xx (MM-DD-YYYY)

Guidance for Agents Regarding the IRC 965(k) Six-Year Statute of Limitations on Assessment for Returns with IRC 965 Issues

Scope of Examination

Examiners should take all appropriate steps to develop the facts, law, argument and appropriate penalties properly for all cases prior to the issuance of a statutory notice of deficiency. If a case is nearing the IRC 6501(a) three-year statute of limitations date, and the taxpayer will not sign a statute extension, the examiner and manager will need to determine if a statutory notice of deficiency should be issued. If a statutory notice of deficiency is not issued before the IRC 6501(a) statute of limitations expires, there may be restrictions on the items that may be adjusted unless there is a different statute of limitations keeping the assessment open. IRC 965(k) provides a six-year statute on assessment only with regard to the IRC 965 net tax liability, while IRC 6501(e)(1)(C) provides a six-year statute on assessment with regard to the entire return. It should be noted that only one statutory notice of deficiency may generally be issued if the taxpayer files a petition with the Tax Court after receiving it. The opportunity to raise additional deficiencies in Tax Court is also subject to limitations.

The IRC 965 net tax liability is generally applicable in the 2017 and/or 2018 tax years and IRC 965(k) generally provides that the statute of limitations on assessment will not expire before six-years after the return for that tax year is filed. The IRC 965(k) six-year statute is limited to assessment of the IRC 965 net tax liability, the calculation of which includes (but is not limited to) the IRC 965(a) inclusion and IRC 965(c) deduction. An election under IRC 965(h) allows a taxpayer to pay the IRC 965(h) net tax liability in installments over an eight-year period. The amounts deferred under IRC 965(h) are liabilities for and assessed in the original year of inclusion, not the year of payment, and accordingly the IRC 965(k) statute only applies to the IRC 965 inclusion year (that is, **the IRC 965(k) six-year statute on assessment is irrelevant to the assessment of tax in the years of the deferred payments, except to the extent of a separate IRC 965 net tax liability to be assessed in the later year and that would trigger a separate application of IRC 965(k).**)

Ideally, local Counsel should be consulted early in the examination to help determine the relevant tax years and whether any special statute of limitations provisions apply. However, it is ultimately the responsibility of the examination group to determine which tax years to open for examination.

Statute of Limitations – In General

Examiners may receive campaign cases with limited time remaining on the IRC 6501(a) three-year statute of limitations or an expired IRC 6501(a) statute of limitations with an “RR” alpha code already assigned to the return by Planning and Special Programs (PSP). Examiners that receive cases with an “RR” alpha code already assigned by PSP must follow the steps below if the IRC 6501(a) statute of limitations is open when the return is received in the examining group.

Examiners may also receive campaign cases without an “RR” alpha code assigned by PSP or discover IRC 965 issues while examining other returns. When these returns have limited time remaining on the IRC 6501(a) three-year statute of limitations, the examiners must update the AIMS database to reflect the appropriate alpha code and follow the steps below. If an IRC 965 issue is discovered on a return where the IRC 6501(a) statute of limitations is expired, the alpha code must be updated, and a Form 15042, Memorandum Approval Request to Allow the Normal Statute Assessment of Limitations to Expire, should be completed.

[IRM 25.6.23.5.7.2](#) and [Exhibit 25.6.23-3](#) provide the authority for a team manager to allow the IRC 6501(a) assessment statute to expire, in other than joint investigation situations. The team manager has the authority and the responsibility to decide whether it is in the government’s best interest to let the IRC 6501(a) assessment statute expire in reliance on an IRC section which serves to extend the IRC 6501(a) three-year assessment statute of limitations. The IRM further instructs that the decision on each case should be documented, discussed, and approved, in writing, by the territory manager.

If additional examination activity relating to IRC section 965 is warranted, the IRC 6501(a) statute of limitations may be allowed to expire. In those instances, the following steps must be followed:

1. The examiner must timely and properly make a request to the taxpayer to extend the assessment statute of limitations and document the file accordingly with the request and the taxpayer’s response (or lack of response). If there is not enough time remaining on the statute when the return is received by the exam team, the team manager can choose not to solicit a statute extension. The team manager should document the reason for not soliciting a statute extension on Form 895, Notice of Statute Expiration, and on Form 15042 (see [IRM 25.6.23.5.7.1](#)).
2. Prior to the expiration of the IRC 6501(a) or extended assessment statute, the examiner must discuss the decision to allow the statute of limitations to expire with the team manager and obtain team manager approval in writing. The case file will be documented accordingly to include a Form 15042 signed by the team manager, concurred with, in writing, by the territory manager. The form should fully set forth the rationale and risk calculus to support the conclusion to allow the assessment statute to expire.

3. The file should include documentation to support the special conditions that require the examiner to allow the IRC 6501(a) or extended statute of limitations to expire. In appropriate cases, the documentation should include the statement "It was determined that there is a likelihood in this case that the taxpayer incorrectly calculated or failed to include the net tax liability under IRC 965".

Prior to the expiration of the IRC 6501(a) or extended assessment statute, but not more than 180 days before the statutory period for assessment expires ([IRM Exhibit 25.6.23-3](#)), the AIMS database should be updated to reflect the appropriate alpha code as follows:

- RR – Various Other IRCs that Override IRC 6501(a), used for the IRC 965(k) six-year statute for assessment **limited to the net tax liability under IRC 965**, or
- NN - Substantial Omission of Items, if it is known there is an omission of subpart F income including but not limited to an IRC 965(a) inclusion (see IRC 6501(e)(1)(C)), or greater than 25 percent omission, or greater than \$5,000 unreported foreign gross income attributable to specified foreign financial assets, **not limited** to the net tax liability under IRC 965.

When the examination is complete and the case is ready to close, the "RR" alpha code statute must be reviewed for accuracy. Unless there is a closing agreement containing specific language waiving the statute of limitations, the "RR" alpha code statute cannot be used to close a case. The "RR" alpha code statute must be updated to the appropriate statute date or other alpha code statute. When a case is closed as either a "no change" (disposal code 02) or a "no change with adjustments" (disposal code 01), the appropriate statute must revert to the actual statute expiration date.

A [Form 3999](#), Statute Expiration Report **is not required if:**

1. The only issue on the return was the 965 issue, and
2. The decision to allow the statute of limitations to expire was properly documented on Form 15042 in the case file.

Follow [IRM 25.6.23.5.7.2](#) and [IRM 25.6.1.13.2.9](#) to properly close the case.

The Statute Expiration Report, Form 3999, is not required if the IRC 6501(a) or extended assessment statute was expired when the return was controlled on AIMS at the group level. Contact [LB&I Policy Office Ask An Expert](#) with any questions regarding Form 3999, Statute Expiration Report.

In instances where the decision to allow the IRC 6501(a) or extended assessment statute to expire was discussed with the team manager, concurred by the territory manager and documented accordingly, all parties involved in the decision will be deemed to have acted appropriately with respect to the statute of limitations issues.

[Form 15042](#) will be used to document your decision to continue examination of a return beyond the expiration of the IRC 6501(a) statute of limitations.

Statute of Limitations – Investor Level Statute Control (ILSC) Pass-Through Entities

An ILSC Pass-Through Entity is defined in [IRM 4.31.5.3](#). An ILSC pass-through entity is any S corporation, or partnership that does not fall under the provisions of TEFRA or elects out of the Bipartisan Budget Act of 2015 (BBA) provisions. In addition, the statute of limitations is generally not controlled at the entity level. The group controlling the "key case" is responsible for statute control and securing extensions for ILSC pass-through entity returns and for **all** related "investor" returns. See [IRM 25.6.23.4.5](#).

An ILSC pass-through entity return may be updated to a "GG" alpha code statute rather than an "RR" alpha code statute by PSP since IRC 965(k) and IRC 6501(e)(1)(C) statutes generally do not apply to the ILSC pass-through entity return. The IRC 965(k) and IRC 6501(e)(1)(C) statutes may apply at the investor level of an ILSC return.

An ILSC pass-through entity return may be received from PSP with a "GG" alpha code statute, an "RR" alpha code statute, or the ILSC pass-through entity's non-alpha code statute. The ILSC pass-through entity return may be updated to a "GG" alpha code statute after properly documenting the determination on Form 895. Attach [Form 14769](#), S Corporation – Statute Analysis Tool, (or its equivalent) for an S corporation or [Form 15260](#), Determination of Pass-through Audit Regime, (or its equivalent) for a partnership, as appropriate, to the Form 895.

There is a waiver for filing Form 3999 for certain returns classified for examination for the IRC 965 Campaign or the IRC Section 965 for Individuals Campaign. As an S corporation can be subject to certain entity level taxes, Form 3999 is not required for an S corporation return if the entity level three-year IRC 6501(a) statute expires within 180 days of the assignment of the associated S corporation return to the team manager's group and the Form 14769 (or its equivalent) is documented within the 180 days.

There also is a waiver for filing Form 3999 for certain returns related to an ILSC pass-through entity return that is part of the 965 Campaign or the IRC Section 965 for Individuals Campaign. Form 3999 is not required for the investors' returns if the three-year IRC 6501(a) statute expires within 180 days of the assignment of the associated pass-through entity's return to the team manager's group if the associated pass-through entity is an ILSC pass-through entity return and the investor's statute is properly documented on [Form 15041](#), Investor level Statute Control (ILSC) Pass-Through Entity Intent Not to Pursue Investor – Statute Protection, or [Form 15042](#) (or its equivalent) (to update to an "RR" alpha code statute) within the 180 days. See [IRM 25.6.23.4.5.1](#) for more information.

For S corporation returns with an IRC 6501(a) statute outside the 180 days of assignment to the team manager's group, complete [Form 14769](#) to determine if entity level taxes may be applicable requiring an extension request of the S corporation level

IRC 6501(a) statute of limitations. If no entity level taxes may be applicable, then update the S corporation to a “GG” alpha code statute. If entity level taxes may be applicable, examiners should request an extension of the S corporation’s IRC 6501(a) statute. If the S corporation will not extend the statute of limitations determine if a statutory notice of deficiency should be issued or complete Form 15042 (or its equivalent) before updating the ILSC pass-through entity return to a “GG” alpha statute code. It is recommended the team manager consult local counsel before updating to the “GG” alpha code statute when entity level taxes may be applicable and the S corporation will not sign a statute extension as the Service’s ability to assess taxes related to IRC 965 may be impacted.

For investor returns with an IRC 6501(a) statute of limitations in excess of 180 days of from the date of assignment of the corresponding ILSC pass-through entity return to the team manager’s group, examiners should either complete Form 15041 following IRM 25.6.23.4.5.1 or follow steps 1 through 3 above before updating the investor level statute to an “RR” alpha code statute.

If the ILSC pass-through entity return or ILSC investor returns’ IRC 6501(a) statute expires within 180 days after assignment of the associated pass-through entity’s return to the team manager’s group, and without proper documentation within the 180-day period, the Form 3999 is required.

Statute of Limitations – TEFRA Partnerships

Additional guidance will be provided for TEFRA partnership returns with IRC 965 issues.

Statute of Limitations – Bipartisan Budget Act of 2015 (BBA) returns

Additional guidance will be provided for BBA returns with IRC 965 issues.

Appeals

[IRM 25.6.23.7.1](#) requires unagreed non-TEFRA cases closing to Appeals have a minimum of 395 days remaining on the assessment statute expiration date (ASED) at the time the case is received by Technical Services. This allows the case to be transferred with the requisite 12 months (365 days) remaining on the ASED for acceptance by Appeals.

Attachment 2 – IG LB&I-04-1120-0020

**Exhibit 25.6.23-3 (MM-DD-YYYY)
Instructions for Updating the Statute on AIMS**

RR - IRCs that Override [IRC 6501\(a\)](#)

Examples of IRCs overriding [IRC 6501\(a\)](#), Limitations on Assessment and Collection - General Rule, normal three-year period for assessment, under certain circumstances—**not otherwise covered by a separately designated ASED alpha code.**

Code Section	Description
IRC 45H	Credit for Production of Low Sulfur Diesel Fuel
IRC 118	Contributions to the Capital of a Corporation
IRC 302	Distributions in Redemption of Stock
IRC 303	Distributions in Redemption of Stock to Pay Death Taxes
IRC 354	Exchanges of Stock and Securities in Certain Reorganizations
IRC 355	Distribution of Stock and Securities of a Controlled Corporation
IRC 409	Qualifications for Tax Credit Employee Stock Ownership Plans
IRC 451	General Rule for Taxable Year of Inclusion
IRC 547	Personal Holding Companies-Deduction for Deficiency Dividends
IRC 617	Deduction and Recapture of Certain Mining Exploration Expenditures
IRC 815	Distributions to Shareholders from Pre-1984 Policyholders Surplus Account
IRC 860	Provisions which Apply to Both Regulated Investment Companies and Real Estate Investment Trusts-Deduction for Deficiency Dividends
IRC 905	Foreign Tax Credits—Applicable Rules
IRC 965	Treatment of Deferred Foreign Income upon Transition to Participation Exemption System of Taxation
IRC 982	Admissibility of Documentation Maintained in Foreign Countries
IRC 1033	Involuntary Conversions
IRC 1042	Sales of Stock to Employee Stock Ownership Plans or Certain Cooperatives
IRC 1233	Gains and Losses from Short Sales
IRC 1359	Election to Determine Corporate Tax on Certain International Shipping Activities Using Per Ton Rate-Disposition of Qualifying Vessels
IRC 2016	Estates of Citizens or Residents-Recovery of Taxes Claimed as Credit
IRC 2032A	Estates of Citizens or Residents-Valuation of Certain Farm, etc., Real Property
IRC 3121	Employment Taxes – Definitions
IRC 4979A	Miscellaneous Excise Taxes-Tax on Certain Prohibited Allocations of Qualified Securities

Code Section	Description
IRC 6038A	Information With Respect to Certain Foreign-Owned Corporations
IRC 6234	Declaratory Judgment Relating to Treatment of Items Other Than Partnership Items with Respect to an Oversheltered Return
IRC 6255	Treatment of Electing Large Partnerships-Definitions and Special Rules
IRC 6501	Limitations on Assessment and Collection (if not otherwise covered by a separate ASED alpha code)
IRC 6503	Suspension of Running of Period of Limitation (if not otherwise covered by a separate ASED alpha code)
IRC 6861	Jeopardy Assessments of Income, Estate, Gift, and Certain Excise Taxes
IRC 6872	Jeopardy, Receiverships, Etc. -Suspension of Period on Assessment
IRC 6901	Transferees and Fiduciaries-Transferred Assets
IRC 7507	Exemption of Insolvent Banks from Tax
IRC 7508	Time for Performing Certain Acts Postponed by Reason of Service in Combat Zone or Contingency Operation
IRC 7508A	Authority to Postpone Certain Deadlines by Reason of Presidentially Declared Disaster or Terroristic or Military Action (suspension of assessment of tax must be specially stated in an IRS announcement/notice in order to suspend the period for assessment)
IRC 7611	Restrictions on Church Tax Inquiries and Examinations
IRC 7811	Taxpayer Assistance Orders
IRC 7874	Rules Relating to Expatriated Entities and Their Foreign Parents

RR is used when another code section overrides [IRC 6501\(a\)](#), Limitation on Assessment and Collection - General Rule, and the special statute condition is not otherwise designated by another ASED alpha code. If RR is used, the [Form 895](#) must reflect which particular IRC section applies and why.

An example of an IRC section which overrides [IRC 6501\(a\)](#) is [IRC 1033\(a\)\(2\)\(C\)](#), Involuntary Conversions, under which a taxpayer whose property is involuntarily converted may elect to recognize only the gain that exceeds the cost of the replacement property acquired within a limited period of time. The RR code indicates that the statutory period for assessment is extended due to the [IRC 1033](#) election. In this example, RR may be used as long as the taxpayer has not notified the IRS, in the

manner prescribed in the relevant regulations, regarding replacement of the property. After the taxpayer notifies the IRS that the converted property has been replaced or will not be replaced, a new statute expiration date will be determined, taking into account the suspension of the statute under [IRC 1033](#), and the RR code will be replaced with the calendar date ASED.

In the above example, the statute for assessment is kept open **only** for tax attributable to gain on the involuntary conversion so a determination must be made that the involuntary conversion is the only issue of tax consequence before the extended assessment statute of [IRC 1033](#) is relied upon to allow the ASED for the entire return to expire and the ASED is alpha coded RR.

The month (MM) and year (YYYY) entries accompanying the RR alpha code are the month and year the statute would expire if there was no involuntary conversion to consider in determining the ASED, in this example.

RR may be used for IRC 965(k) six-year statute for assessment that is limited to the net tax liability under IRC 965. Generally, IRC 965 applies to the 2017 and/or 2018 years. For returns classified for examination for the IRC Section 965 for Individuals campaign or the IRC 965 campaign, PSP will update AIMS to reflect the RR statute code if the returns have not been delivered to the field at least 180 days prior to the expiration of the IRC 6501(a) statute of limitations. Examiners assigned to the IRC Section 965 for Individuals campaign or the IRC 965 campaign or cases with 965 issues can use RR when the assessment is **limited to the net tax liability under IRC 965**.

Once it is determined that IRC 965(k) applies, the ASED should be updated to the applicable numeric six-year statute date. While the RR alpha code is used under the provisions of IRC 965, the year (YYYY) accompanying the RR alpha code will be the six-year expiration date.