



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

SMALL BUSINESS/SELF-EMPLOYED DIVISION

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MEMORANDUM FOR EMPLOYMENT TAX TERRITORY MANAGERS, GROUP
MANAGERS AND SPECIALISTS

FROM: John Tuzynski */s/ John Tuzynski*
Chief, Employment Tax Operations

SUBJECT: Updates to IRM 4.23.13 Employment Tax Refund or Abatement
Claims

The purpose of this memorandum is to communicate changes to procedures for establishing, working and closing employment tax refund or abatement claims, including special processing instructions for Adjusted Employment Tax Returns. The changes are necessary to provide guidance on working and processing the various types of taxpayer requests made when filing the 94X-X series of returns and to address unique processing procedures required when a taxpayer marks Box 1, Part 1, "Adjusted" return. The information provided in this memorandum is effective immediately.

The following sections of IRM 4.23.13 will be re-written as outlined in the attachment to this Interim Guidance Memorandum:

IRM 4.23.13.1
IRM 4.23.13.2
IRM 4.23.13.5
IRM 4.23.13.6
Exhibit 4.23.13-1

The following Exhibit has been added to provide instructions to examiners for completions of Form 3870, when required:

Exhibit 4.23.13-2

The impacted IRM sections will be updated to reflect these corrections by January 31, 2013.

If you have any questions about these interim procedures, please contact Lynne McCoy, Employment Tax Policy.

4.23.13.1 Overview: Centralized Classification of Employment Tax Adjusted Returns and Claims for Refund or Abatement

(1) This section provides guidelines on employment tax refunds or abatement requests. The examiner must determine what type of request the taxpayer has made to properly examine, close, and process the case. The following are the types of requests addressed in this IRM:

- Claims for Refund
- Claims for Abatement
- Adjusted Returns
- Audit Reconsideration Requests

(2) Classification of most employment tax claims and adjusted returns for examination is conducted at the Campus. However, in the course of conducting an open examination, an examiner may receive adjusted returns or informal requests (claims).

(3) Effective for errors discovered on or after January 1, 2009, regulations were issued in connection with the IRS's development of "X" adjusted or claim for refunds. These forms correspond and relate line-by-line to the employment tax return they are correcting and to the tax period in which the error actually occurred. The "X" forms affect taxpayers that file:

- Form 941, Employer's Quarterly Federal Tax Return,
- Form 943, Employer's Annual Tax Return for Agricultural Employees,
- Form 944, Employer's Annual Federal Tax Return
- Form 945, Annual Return of Withheld Federal Income Tax, and
- Form CT-1, Employer's Annual Railroad Retirement Tax Return.

(4) Taxpayers will continue to use Form 843 for requesting abatement of assessed penalties and interest.

(5) There is no "X" form for the Form 940, Employer's Annual Federal Unemployment (FUTA) Tax Return. Taxpayers will continue to use a Form 940 for amending previously filed returns.

(6) The new "X" forms allow taxpayer's to file either an "adjusted" (Box 1) or "claim" (Box 2) employment tax return. While the taxpayer's selection between the two blocks does not affect how the case is worked by the examiner, it does affect the final processing of the case. Returns with the "adjusted" block marked cannot result in a refund issued to the taxpayer. Any credit balance resulting from the exam or processing of the return MUST be moved to the quarter in which the "X" adjusted return was filed. Any credit balance transfer will be completed using a Form 3870 after the examination.

The following special procedures must be used for all "X" returns examined if the taxpayer marked the "adjusted" Box 1, Part 1 of the form:

- Prepare a partial Form 3870 (see Exhibit 4.23.13-2 for instructions on completion by the examiner) and send to PSP using the following address:
201 West Rivercenter Blvd
Stop 5702A/Employment Tax/Adjusted Return Form 3870
Covington, KY 41011
- Enter Hold Code 2 in item 07 on Form 5344 (Form 5599 for TEGE).
- Enter "Adjusted Return involving a Credit Balance" in the comment section of the Form 3198 (Form 3198A for TE/GE)
- Close the case using the normal procedures to Centralized Case Processing (CCP).

4.23.13.2, *Employment Tax Abatement Claims*

(1) In accord with Policy Statement 4-103, after employment taxes have been assessed as a result of an examination, the taxpayer will generally be required to pay the assessment and file a claim for refund before receiving any further consideration of the case. See IRM 4.23.13.9. However, a claim for abatement of such an assessment (Audit Reconsideration) will be considered on its merits if:

1. A jeopardy assessment is involved. Under Policy Statement 4-88, a claim for abatement of a jeopardy assessment will be fully considered on an expedited basis. Final action on such an abatement claim must have the approval of the SB/SE Area Director, SB/SE Chief Employment Tax Operations, or equivalent for LB&I or TE/GE.
2. The taxpayer establishes a meritorious reason for considering the claim, such as failure to receive a preliminary (30-day) letter.

Additional information on Audit Reconsiderations can be found in IRM 4.13.4, *Audit Reconsideration - Area Office Examination*, and 4.10.8.7, *Claims for Abatement, Audit Reconsiderations, and Supplemental Reports*

(3) Taxpayers whose Audit Reconsideration requests are not considered by Examination will receive Letter 924, No Consideration Letter on Abatement Claim – Excise and Employment Taxes.

(4) When it is determined that an Audit Reconsideration request should be considered on its merits, the taxpayer will be afforded due consideration by the Appeals Office.

(5) When a claim for abatement is filed and there has been NO previous examination action, the claim will still be considered by the examiner; however, the taxpayer will NOT be afforded consideration by the Appeals Office. Any adjustment to the tax on the module will be considered and reflected in the examination report. Letter 693 will be used for **all** correspondence to the taxpayer involving the disposition of this type of claim for abatement.

(6) See IRM 4.23.8.4, *IRC 3402(d) – Relief for Employer When Employees Have Paid Income Tax on Wages*,” regarding employers’ requests under IRC 3402(d) for relief from payment of income tax withholding. These requests constitute abatement claims and are usually handled at a Campus. However, examiners do have the discretion to accept the Form 4669’s and Form 4670 before the examination is closed to reduce and/or abate the appropriate portion of the assessment as part of their examination report.

4.23.13.5, *Employment Tax Adjusted Returns or Tax Claims Allowed on Survey*

(1) Adjusted Returns or Claims for Refund or Abatement (that do not meet Audit Reconsideration requirements) may be “Surveyed After Assignment” if the examiner concludes after a review of the case file that the claim is clearly allowable in full and that the case does not, otherwise, warrant examination.

(2) In a survey after assignment of an adjusted return or claim for refund or abatement, a survey report, Form 2503, Survey After Assignment – Excise or Employment Tax, does not need to be prepared if the facts clearly show it is unnecessary for the examiner to record reasons for recommending the allowance of the overassessment or abatement. In such cases, Form 5344, Examination Closing Record (or Form 5599, EO Examined Closing Record, for TE/GE), will serve as the administrative file record of the action taken.

(3) Closing procedures for surveying the return will vary depending on the type of “X” return filed (determined by the block checked in Part 1 of the Form).

- i. “Adjusted” Returns allowed in full on survey, after approval by the Group Manager, will be processed using the special procedures noted in 4.23.13.1(6) and Exhibit 4.23.13-2 before final closure from the group
- ii. “Claim” Returns (whether for refund or abatement that are not Audit Reconsiderations) allowed in full on survey, after review and approval by the Group Manager, will be processed and closed in the same manner as no-change or agreed cases.

4.23.13.6 *Examination and Disposition of Employment Tax Adjusted Returns or Tax Claims on their Merits*

(1) The general procedures for examining returns, issuing preliminary letters, and referring cases to Appeals apply in disposing of employment tax adjusted returns or claims for refunds. See IRM 4.10.8.9, *Claims*, for instructions on general claim procedures. See Exhibit 4.23.13-1 for additional guidance for closing employment tax claims. See IRM 4.23.13.1 (6) and Exhibit 4.23.13-2 for special handling instructions when closing an “X” return where the “adjusted” Box 1, Part 1, has been checked by the taxpayer.

(2) Examination or other action on an adjusted return or claim for refund or abatement should begin within 30 days after receipt. If the taxpayer is in balance due status, the revenue officer or Automated Collections Service (ACS) should be advised of the claim process and that a TC470 and CC90 should be input. The assigned revenue officer will be advised of the resolution of the case.

(3) If an adjusted return or claim for refund or abatement is received on a case already under examination, it should be considered during such open examination. If the claim pertains to a case in Appeals status, it should be referred to that office for consideration and disposition as part of the Appeal case. See IRM 4.23.13.7 for claims on cases previously closed by Appeals.

(4) When an adjusted return or claim for refund or abatement is examined and the statute of limitation allows, the examiner must consider other potential issues.

(5) Adjusted returns or claims for refund disallowed in full or in part with no adjustments to the tax liability will include:

- Form 3363, Acceptance of Proposed Disallowance of Claim for Refund or Credit
- Form 2297, Waiver of Statutory Notice of Claim Disallowance
- Form 4666, Form 4668
- Letter 569 and all necessary attachments

(6) Adjusted return or claim for refund disallowed in full or in part with additional adjustments to the tax liability:

- Form 3363
- Form 2297
- Form 4666, Form 4668 and Form 4667, if applicable
- Form 2504, Agreement to Assessment and Collection of Additional Tax and Acceptance of Overassessment – Excise and Employment Tax (See IRM 4.23.10.12.11, *Form 2504, Form 2504-S and Form 2504-WC*)
- Letter 569 and all necessary attachments.

(7) Agreed adjusted return or claim for refund disallowed in full or in part will follow the case notification procedures in IRM 4.23.10.7, *Notification Letters in Agreed Cases*.

(8) Adjusted return or claim for refund allowed in full:

- Form 4666 and Form 4668
- Letter 570 will be prepared by the examiner and left in the case file for issuance by CCP. The Letter 570 constitutes the final closing letter and is issued by Centralized Case Processing (CCP).

(9) If the Form 2297 is not secured when an adjusted return or claim for refund is proposed for disallowance in whole or in part, or if the taxpayer signs Form 3363 and/or Form 2504 but refuses to execute Form 2297, a certified notice of disallowance is issued after all other administrative action has been concluded. When a certified notice of disallowance is to be issued, Technical Services will be notified by use of Form 3198, Special Handling Notice, or Form 9231, collection – Employment Tax Examination Handling/Routing Instructions. Technical Services will issue Letter 905 for a partial disallowance case or Letter 906 for a full claim disallowance. If adjusted returns or claims for more than one period, or more than one claim for a single period are involved, specific information for each claim should be furnished.

(10) When an adjusted return or claim for refund is disallowed because the taxpayer failed to appear for an interview or provide substantiation, the following explanation will be shown at the end of Letter 569: “No basis for the allowance of the claim has been submitted.” See IRM 4.10.8.9.3.1, *“No - Show” Claim Disallowance*.

Exhibit 4.23.13-1, *Special Instructions for Working and Closing Employment Tax Claims – Form 94X-X:*

1. Request a current transcript of the account to determine the type of request being made:
 - If the request involves an abatement of a previous examination assessment, treat the request as an Audit Reconsideration. If the case has been closed, the examiner will request the original case file. The examiner will use Source Code 73 for this type of request.
 - If the request involves the abatement of tax that was not assessed by an examination determination (TC30X or 29X) the request will be treated as a claim for abatement. The examiner will use Source Code 73 for this type of request. Audit Reconsideration procedures will be followed except the taxpayer does NOT have Appeal Rights and Letter 693 will be used for all correspondence regardless of the disposition of the case.

- If the account is in zero balance and the taxpayer is requesting an adjustment or refund of previously paid taxes, no matter how they originated, the request will be treated as an adjustment or claim for refund. (NOTE: closing procedures for this type of claim will vary depending on what block in Part 1 of the “X” return has been marked – see IRM 4.23.13.1 (6) for special handling instructions.) The examiner will use Source Code 30 for this type of request.
2. Special procedures for Statute Dates:
 - Open Statutes must be protected. Any deviation from this must be discussed and approved by the group manager.
 - Alpha Statute “AA” may be used when there is less than 180 days remaining on the open statute date and the examiner has determined there are no other issues warranting examination other than the amounts reflected on the 94X-X return.
 - Alpha Statute “AA” may NOT be used when the adjusted return or claim for refund has been allowed by the campus (whether payment, additional assesment or transfer of credit balance).
 3. The case file documentation for an adjusted return or claim for refund or abatement examination will be similar to the original case, i.e. Form 4318, workpapers and Form 886-A for the unagreed case report. If the claim is:
 - Allowed in full – the examiner will issue Form 4666 and Form 4668 to the taxpayer. Examiner will prepare and CCP will issue Letter 570 upon final closing.
 - Rejected in full – the examiner will issue Letter 569 and use Form 2297, Form 3363 and Form 4666.
 - Allowed in part – the examiner will issue Letter 569 and use Forms 2297, 3363, 4666, and 4668.
 - Full disallowance with additional tax due – the examiner will issue Letter 569 and Forms 2297, 3363, 4666 and 4668.

When additional taxes result, agreement will be secured on the appropriate Form 2504.

NOTE: If the examination includes the original case file, the Form 94X-X will be attached behind the original return or return assembly. All material relative to the current examination is assembled directly behind the 94X-X. The signed Form 2297 and Form 3363 (if required) are clipped to the left inner side of the case jacket. Do not change the original case assembly.

4. Form 5344 – will be completed for all cases to ensure proper assessments are made.
 - In addition to normal completion, the following special features will be marked, when appropriate:
 - Item 07 – will have Hold Code 2 for all cases where the Adjusted Return Box 1, Part 1 of the “X” return has been marked. This will keep the resulting credit balance from being refunded to the taxpayer and will allow processing time to move the credit balance to the appropriate quarter.
 - Items 20, 21, 22 and 23 will only be completed for requests for refunds (Source Code 30). Entries in these blocks are not required for Source Code 73, Reconsideration requests.

5. Form 3198 – the following special handling procedures will be marked, when applicable:
 - Special Features:
 - Surveyed Claim
 - Other Instructions: “Adjusted Return involving a Credit Balance”
 - Forward to Technical Services:
 - Statutory Notice of Claim Disallowance – Letter 905 or 906
 - Letter Instructions for CCP
 - Claim Letters with the appropriate letter marked. Ensure completed draft copy is included in the file.

Exhibit 4.23.13-2, *Instructions for Completion of Form 3870 by the Examiner.*

This form will be completed in ALL cases involving a 94X-X return where the taxpayer has marked “Adjusted” return in Part 1 of the form.

- Complete all pertinent information in Blocks 1 – 10.
- Complete Block 11 with the following wording:
 - The Taxpayer filed a Form 94X-X requesting an adjustment on Date. Please input the following credit transfer:
 From: MFT XX Tax Period XXXXXX Transaction Code: 830 Date*:
XX/XX/XX Amount: \$

 - To: MFT XX Tax Period XXXXXX Transaction Code: 710 Date^:XX/XX/XX
 Amount: \$

Legend for above wording:

94X-X will be the specific type of amended return (941, 943, 944, 945 that was filed)

Date – the date the amended return was received by the Service

MFT – will be the specific MFT for the type of return;

Tax Period – will be the specific taxpayer period

* Date – will always be the due date of the return for which the 94X-X is filed

^ Date – will always be the 1st day of the quarter in which the 94X-X is filed.

The examiner will never complete the Amount. This will be completed by PSP once the case is closed.

For example, a 941-X with the adjusted return block checked for the 201009 quarter. The return is received by the Service on September 21, 2011. The audit results in a credit of \$1000.

The wording in Block 11 of Form 3870 would be:

The taxpayer filed a Form 941-X for the period above on 9/21/2011.

Please input the following credit transfer:

From: MFT 01 Tax Period 201009 Transaction Code: 830 Date: 10/31/2010 Amount: \$ _____

To: MFT 01 Tax Period 201109 Transaction Code: 710 Date: 7/1/2011 Amount: \$ _____