

IRM PROCEDURAL UPDATE

DATE: 03/10/2026

NUMBER: sbse-04-0326-0300

SUBJECT: Incorporate Sections 70112 and 70433 of One, Big, Beautiful Bill Act

AFFECTED IRM(s)/SUBSECTION(s): 4.23.5

CHANGE(s):

IRM 4.23.5.3.4 - A resource in Paragraph (1) was revised.

(1) Generally, a worker status determination for a class of worker is not made by an examiner if the firm is entitled to section 530 relief with respect to those workers. However, workers may be determined to be employees through some other means such as an employee plans examination. In addition, workers may request a determination of their individual status by filing a Form SS-8, *Determination of Worker Status for Purposes of Federal Employment Taxes and Income Tax Withholding*. For background on the Form SS-8 Program refer to IRM 7.5.1 , **Form SS-8 Processing Handbook**.

(2) It is important to remember that even if an employer is entitled to section 530 relief, workers determined to be employees in paragraph (1) are employees for other purposes of the IRC. Section 530 only terminates the liability of the employer for the employment taxes but has no effect on the employees' status. It does not convert workers from the status of employee to the status of self-employed (non-employee). The workers are still considered employees for income tax and qualified benefit plan eligibility purposes. Therefore, the employer must consider these workers as employees in determining whether its pension, profit-sharing, or stock-bonus plan satisfies the qualification requirements of IRC 401(a).

(3) The workers determined to be employees in paragraph (1) remain liable for the employee share of FICA tax with respect to all wages received. See Rev. Proc. 2025-10, section 8.02, and Treas. Reg. 31.3102-1(c). See also Rev. Rul. 86-111, 1986-2 C.B. 176.

(4) Where workers determined to be employees in paragraph (1) have filed and paid their tax under the Self-Employment Tax Contributions Act (SECA), they may file a claim for refund for the difference between SECA tax and the employee share of FICA, if applicable. However, they may owe additional tax if the employee share of FICA exceeds the SECA that they actually paid. The specific tax effect will depend on a number of factors, including the amount of expenses deducted on Schedule C (Form 1040), Profit or Loss From Business, (if any) and whether the expenses are allowable as a deduction on Schedule A (Form 1040), Itemized Deductions, as employee business expenses (for years prior to 2018).

(5) As an employee, the worker generally cannot deduct unreimbursed business expenses on Schedule C (Form 1040) but must deduct them as miscellaneous itemized deductions on Schedule A (Form 1040), subject to the two-percent limitation under IRC 67. This sometimes results in liability for the alternative minimum tax. Further, the worker cannot adopt or maintain a self-employment retirement plan. Finally, certain benefits provided by the taxpayer to a worker as an employee may be excludable from income by the employee due to specific IRC exclusions provided only to employees (for example employer provided accident and health insurance).

(6) Notice 989, Commonly Asked Questions When IRS Determines Your Work Status is "Employee", is mailed to taxpayers who submit a Form SS-8 to determine their exact employment tax status (i.e., employee or independent contractor), along with the appropriate SS-8 Determination Program Letter. The notice contains information for Form 1040, *U.S. Individual Income Tax Return*, filers if their status is changed from non-employee to employee.

IRM 4.23.5.5.1(7) - Paragraph (7) was revised to update the IRM references.

(7) Document the case history/activity record with the date of mailing or personal delivery of the notice requirements in (3) above, as well as the date that Form 12175, Third Party Contact Report Form, was prepared and forwarded to the Third Party Contact Coordinator. See IRM 4.23.3.8.3l, Initiating Contact, and IRM 4.23.3.8.4, Initial Interview With Taxpayers, for additional requirements.

IRM 4.23.5.8(1) - Resource provided in the paragraph is no longer available. The resources was updated to IRM 4.70, TE/GE Examinations.

(1) The Federal, State and Local Governments Employment Tax office (FSL/ET) is responsible for education and compliance activities affecting government entities. FSL/ET is located in TE/GE and must refer to IRM 4.70, TE/GE Examinations, for guidance in conducting an examination.

IRM 4.23.5.8(2) - A resource in Paragraph (2) was revised.

(2) The Indian Tribal Governments office (ITG) has responsibility for employment tax and all other aspects of federal tax administration as it applies to Indian and Alaskan Native tribal governments. Refer to IRM 1.1.23.6.3.4, Indian Tribal Governments. All IRS employees are required to contact ITG through the Specialist Referral System (SRS) before making initial contact on Indian tribal government cases. An ITG Specialist will be assigned to assist. ITG is located in TE/GE and must refer to IRM 4.70, TE/GE Examinations, for guidance in conducting an examination.

IRM 4.23.5.15.2(6) - The note after item c was modified to inform the user the exclusion from gross income and wages for qualified bicycle commuting reimbursements was permanently repealed by One, Big, Beautiful Bill Act (OBBBA) (Public Law 119-21) section 70112 for taxable years beginning after December 31, 2025.

(6) Qualified Transportation Fringes: IRC 132(f) and applies to the following benefits:

- a. A ride in a commuter highway vehicle, under IRC 132(f)(5)(A), meaning any highway vehicle that transports the employee between the employee's home and workplace. The vehicle must seat at least 6 adults (excluding the driver) and the expectation must exist that at least 80 percent of the vehicle's mileage will be for transporting employees between home and work. Employees must occupy at least one-half of the seats, not including the driver.
- b. A transit pass, under IRC 132(f)(5)(B), meaning any mass transit pass, token, farecard, or voucher entitling a person to ride free or at a reduced rate on a mass transit system or in a commuter highway vehicle as defined previously.
- c. Qualified parking, under IRC 132(f)(5)(C), meaning parking that the employer provides to employees on or near the employer's business premises. It also includes parking on or near the location from which employees commute to work using mass transit, commuter highway vehicles, carpools or any other means.

Note: IRC 132(f) excluded from gross income and wages for qualified bicycle commuting reimbursements. The Tax Cuts and Jobs Act (TCJA) (Public Law 115-97) section 11047 suspended the exclusion for taxable years beginning after December 31, 2017, and before January 1, 2026. The One, Big, Beautiful Bill Act (OBBBA) (Public Law 119-21) section 70112 permanently terminates the exclusion for taxable years beginning after December 31, 2025

IRM 4.23.5.15.2(7) - The content of paragraph (7) was modified to remove the examples of non-excludable expenses. The examples in items a and b were removed. The content of the note at the end of the paragraph (7) was moved to item a of paragraph (7). Item b was changed to inform the user of changes to the IRC that were made permanent by One, Big, Beautiful Bill Act (OBBBA) (Public Law 119-21) section 70113.

(7) Qualified Moving Expense Reimbursement: IRC 132(g) applies to any amount given to an employee, directly or indirectly, as payment for, or a reimbursement of, moving expenses. Only those expenses that the employee could deduct under IRC 217, if the employee had paid or incurred them, are excludable. Any other expenses paid by the

employer on behalf of the employee are includible as compensation subject to employment taxes.

- a. TCJA section 11048 suspended the exclusion from gross income and wages for qualified moving expense reimbursements. However, military personnel on active duty who relocate due to a military order are still exempt. This change applies to taxable years beginning after December 31, 2017, and before January 1, 2026, and
- b. OBBBA section 70113 made permanent the suspension and the exception for military personnel on active duty when they relocate due to a military order and a new appointee of the intelligence community (as defined in section 3 of the National Security Act of 1947 (50 USC 3003)) (other than a member of the Armed Forces of the United States) who moves pursuant to a change in assignment that requires relocation to exclude moving expense reimbursements from gross income and wages. This change applies to taxable years beginning after December 31, 2025.

IRM 4.23.5.19 - Changed the title of the section to "General Tax Principles Applicable to Digital Asset Transactions" based on the recommendation of the Digital Assets Initiative (DIA) Team.

General Tax Principles Applicable to Digital Asset Transactions

(1) The Infrastructure Investment and Jobs Act (IIJA) (Public Law 117-58) Section 80603 defined **digital asset** for purposes of IRC 6045 as any **digital representation of value which is recorded on a cryptographically secured distributed ledger or any similar technology as specified by the Secretary**. Virtual currency, convertible virtual currency, cryptocurrency, stablecoins, and non-fungible tokens (NFTs) all fall under the definition of a digital asset. However, the IRS has not updated Notice 2014-21, Tax Treatment of Virtual Currency, and the related FAQs to reflect the updated terminology used by the IRS in the IIJA. Therefore, the paragraphs below referencing Notice 2014-21 and the related FAQs continue to use the term, **virtual currency** and not **digital asset**.

(2) Digital asset that has an equivalent value in real currency, or that acts as a substitute for real currency, is referred to as "convertible" digital asset.

(3) According to the FAQ, virtual currency is treated as property for federal tax purposes and is not treated as currency that could generate foreign currency gain or loss for U.S. federal tax purposes. Also, a taxpayer who receives virtual currency as payment for goods or services must, in computing gross income, include the fair market value of the virtual currency, measured in U.S. dollars, as of the date that the virtual currency was received. The character of a gain or loss generally depends on whether the virtual currency is a capital asset in the hands of the taxpayer. For example, stocks, bonds, and other investment property are generally capital assets. Bitcoins held as an investment would be a capital asset. In addition:

- Wages paid to employees using virtual currency are taxable to the employee, must be reported by an employer on a Form W-2, and are subject to FICA, FUTA and FITW.
- Payments using virtual currency made to independent contractors and other service providers are taxable and self-employment tax rules generally apply. Normally, payers must issue Form 1099-NEC for non-employee compensation when the value of the virtual currency meets or exceeds the reporting threshold amount.
- A payment made using a virtual currency is subject to information reporting to the same extent as any other payment made in property.

(4) No inference should be drawn regarding digital assets (virtual currencies) not described in the notice. For additional information regarding convertible digital assets, see the Financial Crimes Enforcement Network (FinCEN) report "FIN-2013-G001".

IRM 4.23.5.19(1) - Paragraph (1) was revised based on the recommendation of the DIA Team.

(1) The Infrastructure Investment and Jobs Act (IIJA) (Public Law 117-58) Section 80603 defined **digital asset** for purposes of IRC 6045 as any **digital representation of value which is recorded on a cryptographically secured distributed ledger or any similar technology as specified by the Secretary**. Virtual currency, convertible virtual currency, cryptocurrency, stablecoins, and non-fungible tokens (NFTs) all fall under the definition of a digital asset. However, the IRS has not updated Notice 2014-21, Tax Treatment of Virtual Currency, and the related FAQs to reflect the updated terminology used by the IRS in the IIJA. Therefore, the paragraphs below referencing Notice 2014-21 and the related FAQs continue to use the term, **virtual currency** and not **digital asset**.

IRM 4.23.5.19(2) - Removed the first sentence of the paragraph since it duplicates information in paragraph (1).

(2) Digital asset that has an equivalent value in real currency, or that acts as a substitute for real currency, is referred to as "convertible" digital asset.

IRM 4.23.5.19(3) - Within paragraph (3) changed the word "digital" to "virtual" based the recommendation of the DIA Team. Changed the bullet list to an alpha list to be consistent with the IRS Style Guide. Changed item b from "exceeds \$600" to "meets or exceeds the reporting threshold amount" to be consistent with One, Big, Beautiful Bill Act (OBBBA) (Public Law 119-21) Section 70433. The reporting threshold amount will be adjusted annually for inflation after calendar year 2026.

(3) According to the FAQ, virtual currency is treated as property for federal tax purposes and is not treated as currency that could generate foreign currency gain or loss for U.S. federal tax purposes. Also, a taxpayer who receives virtual currency as payment for goods or services must, in computing gross income, include the fair market value of the virtual currency, measured in U.S. dollars, as of the date that the virtual currency was received. The character of a gain or loss generally depends on whether the virtual currency is a capital asset in the hands of the taxpayer. For example, stocks, bonds, and other investment property are generally capital assets. Bitcoins held as an investment would be a capital asset. In addition:

- Wages paid to employees using virtual currency are taxable to the employee, must be reported by an employer on a Form W-2, and are subject to FICA, FUTA and FITW.
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- A payment made using a virtual currency is subject to information reporting to the same extent as any other payment made in property.

IRM 4.23.5.23.6.5(1) - Paragraph (1) was revised to clarify the instructions and guidance provided.

(1) All examiners will conduct preliminary compliance checks on employment tax returns that include the payroll tax research credit. Specifically, they will:

- a. Verify that the payroll tax election has been properly made on the income tax return, and
- b. Confirm that the payroll tax credit is accurately claimed on the employment tax return.

IRM 4.23.5.23.9 - This is new subsection added to the IRM. The purpose of this subsection is to provide specific report writing and case closing instructions for all examiners working employment taxes to use when adjusting the Qualified Small Business (QSB) Payroll Tax Credit for Increasing Research Activities.

(1) The purpose of this subsection is to provide additional instruction and guidance for report writing instructions for all examiners working employment taxes to use when adjusting the QSB Payroll Tax Credit for Increasing Research Activities. Primary guidance

and procedures for report writing can be found in IRM 4.23.10, Report Writing Guide for Employment Tax Examinations.

IRM 4.23.5.23.9.1 - This is a new subsection added to the IRM. The purpose of this subsection is to provide instruction and guidance to examiners working employment taxes in writing a report when adjusting the QSB Payroll Tax Credit for Increasing Research Activities.

(1) As detailed in IRM 21.7.2.5.21 paragraph (2), Processing Form 8974, Qualified Small Business Payroll Tax Credit for Increasing Research Activities, Item Reference Number (IRN) 119 was developed for the QSB Payroll Tax Credit.

(2) Adjustments to the QSB Payroll Tax Credit for Increasing Research Activities should be entered on Line 25, "Increase (decrease) in other credits", of Form 4668, Employment Tax Examination Changes Report. Line 25 of Form 4668 should be updated as follows:

- a. "119" should be entered in the "IRS Ref" column of Form 4668 to document the Item Reference Number.
- b. Adjustment amounts should be entered in the applicable quarter(s) in column(s) b, c, d, and/or e as applicable.

(3) The credit adjustment should also be listed on the Form 2504 (appropriate version) in the column labeled "Credit Increase (Decrease)", as well as the Form 4666, Summary of Employment Tax Examination, in the column entitled "Increase (Decrease) in Allowed Credits." If using the Specialty Employment Tax Application (SETA) report, adjustments entered onto Form 4668 as described above will properly flow through to Form 2504 and Form 4666.

IRM 4.23.5.23.9.2 - This is a new subsection added to the IRM. The purpose of this subsection is to provide instruction and guidance to examiners in completing Form 5344, Examination Closing Record, when adjusting the QSB Payroll Tax Credit for Increasing Research Activities.

(1) (1) In addition to the traditional required entries on Form 5344, Examination Closing Record, adjustments to the QSB Payroll Tax Credit for Increasing Research Activities require entries to the following fields:

Box	Action
Box 12	<ul style="list-style-type: none">• Transaction Code (TC) 300 for a positive (+) amount to decrease the credit or• TC 301 to for a negative (-) amount to increase the credit

Box 15	<ul style="list-style-type: none">• IRN 119 for a positive (+) amount to increase the credit or• IRN 119 for a negative (-) amount to decrease the credit
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IRM 4.23.5.24.7 - Removed paragraph (1), (2), and (3) and replaced with a single paragraph (1) that provides a reference to IRM 25.6.1.9.5.10, COVID-19 Related Employment Tax Credits and IPU 25U0438, dated April 11, 2025, which updates IRM 4.23.13, Adjusted Returns, Abatements and Claims. These items have current guidance and resources for COVID-19 Credits statute of limitation.

(1) American Rescue Plan of 2021 (ARP), Public Law 117-2 and One, Big, Beautiful Bill Act (OBBBA), Public Law 119-21, have extended the statutes of limitations for assessments related to certain COVID-19 employment tax credits. For guidance on the extended statutes of limitations for COVID-19 related employment tax credits, refer to:

- IRM 25.6.1.9.5.10, COVID-19 Related Employment Tax Credits, and
- IPU 25U0438, dated April 11, 2025, which updates IRM 4.23.13, Adjusted Returns, Abatements and Claims.