MEMORANDUM FOR: LARGE BUSINESS & INTERNATIONAL (LB&I), TAX EXEMPT/GOVERNMENT ENTITIES (TE/GE), AND SMALL BUSINESS/SELF EMPLOYED (SB/SE) EMPLOYEES AFFECTED BY EMPLOYMENT TAX POLICIES AND PROCEDURES

FROM: Daniel R. Lauer

SUBJECT: Interim Guidance on Railroad Examination Procedures

Purpose: The purpose of this memorandum is to provide revised guidance to SB/SE Employment Tax (ET) Managers and Examiners on railroad examinations.

Background/Source of Authority: Revised instructions are provided to clarify railroad examination procedures.

Procedural Changes: To reflect the corrected procedure for Item Reference Number (IRN) "070", IRM 4.23.10.10.9.2, Form 4668-C, will read as follows:

(2) Form 4668-C, Employment Tax Examination Changes Report – Railroad, reports adjustments to total compensation, sick pay, tips, and various credits, and computes the additional taxes and penalties. These adjustments are allocated either quarterly or annually, based on the required return, to compute applicable penalties and interest. Item Reference Number (IRN) "070" is necessary for adjusting the total of railroad retirement tax (including Additional Medicare Tax for calendar years beginning after December 31, 2012). Line 16 of Form 4668-C identifies the total...
wage adjustment as “070” for CT-1 examinations only. This IRN is also entered on Item 15, “Credit and Tax Computation Adjustments,” of Form 5344. See IRM 21.7.2.6.5.1, Form CT-1 Tax Adjustments.

IRM 4.23.10.10.1, Railroad Retirement Tax Act (RRTA) Examination Reports, is changed, in part, as follows:

(4) Item Reference Number (IRN) “070” is necessary for adjusting the total of railroad retirement tax (including Additional Medicare Tax for calendar years beginning after December 31, 2012). Line 16 of Form 4668-C identifies the total RRTA wage adjustment as “070” for CT-1 examinations only. This IRN is also entered on Item 15, “Credit and Tax Computation Adjustments,” of Form 5344. See IRM 21.7.2.6.5.1, Form CT-1 Tax Adjustments.

(7) All agreed railroad employment tax examination cases will be flagged on Form 3198, Special Handling Notice for Examination Case Processing, in the “Special Features” section under “Other Instructions” with the following statement: “Railroad Retirement Board Case, Special Disclosure Action Required.” Also, additional instructions should be provided to enable CCP to accurately process the case in the “Letter Instructions for CCP / Other Instructions” section, with the following statement: “Forward copies of Form 4668-C, Form 886-A, and RRB Memorandum to RRB.” For additional information, see IRM 4.4.10.2.5.1, Adjustments to RRTA – CCP Responsibility.

(8) Upon closing an employment tax case involving a railroad, the examiner should include a copy of the report in the file clearly marked as an RRB referral. For additional information, see IRM 4.4.10.2.5, Adjustments to Railroad Retirement Tax Act (RRTA) - Group Responsibility.

(9) Questions involving railroad employment taxes should be directed to the LB&I Railroad Collateral Subject Matter Experts (SMEs). The Railroad Industry website includes “FAQs”, issues, resources, and a link to the SMEs. See https://portal.ds.irsnet.gov/sites/vl025/lists/railroad/landingview.aspx. Additional assistance for railroads is available from the SB/SE employment tax policy analyst assigned the railroad program.

In addition, new IRM 4.23.10.10.1.1, RRTA Examination Reports For RRTA Conversion Cases, is added from former IRM 4.23.10.10.1(3):

(1) In addition to the instructions in IRM 4.23.10.1, in RRTA examinations involving the conversion of an employee from FICA coverage to RRTA coverage, the examiner will advise the taxpayer to file a protective claim under IRC 3503, Erroneous Payments, and the Regulations thereunder. No action should be taken on these claims until all administrative and judicial proceedings are resolved. See IRM 4.23.8.6.1, Special Rules Relating to FICA and RRTA Taxes, and IRM 4.23.8.6.1.1, Processing and Submission of Forms for FICA and RRTA Adjustments, for additional procedures on RRTA conversion cases.
**Effect on Other Documents:** This guidance will be incorporated into IRM 4.23.10.10.9.2 & 4.23.10.10.1 by December 11, 2021.

**Effective Date:** December 12, 2019

**Contact:** If you have any questions concerning this interim guidance, contact Laird MacMillan, Policy Analyst, SB/SE Employment Tax Policy at (763) 347-7383.

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