



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, DC 20224

SMALL BUSINESS/Self-EMPLOYED DIVISION

August 25, 2023

Control Number: SBSE-05-0823-0048
Expiration Date: 08/21/2024
Affected IRMs: 5.7.10

MEMORANDUM FOR DIRECTOR, FIELD COLLECTION

FROM: Rocco A. Steco, Acting Director, Collection Policy

Rocco A.
Steco Jr.

Digitally signed by Rocco
A. Steco Jr.
Date: 2023.08.25 10:28:43
-04'00'

SUBJECT: Update of IRM Deviation: Control Point Monitoring (CPM) Procedures for Trust Fund Recovery Penalty (TFRP) Cases with COVID-19 Tax Periods Returned from Appeals

This memorandum updates interim guidance previously provided by IRM deviation memorandum SBSE-05-0822-0058, in accordance with Internal Revenue Manual (IRM) 1.11.10.9.2, Reissue Interim Guidance, to provide continuing guidance to Civil Enforcement Advice and Support Operations (CEASO) employees who receive trust fund recovery penalty (TFRP) cases returned from Appeals with tax periods impacted by the various COVID-19 legislation.

Effective Date: This guidance is effective 08/25/2023 through 08/21/2024.

Source of Authority: The source of authority for the TFRP is 26 U.S. Code § 6672, Failure to Collect and Pay over Tax, or Attempt to Evade or Defeat Tax.

Background:

SB/SE Headquarters, Collection Policy issued IRM deviation memorandum SBSE-05-1222-0084, IRM Deviation: Guidance for Proposing Assessment of the Trust Fund Recovery Penalty (TFRP) on Tax Periods with Nonrefundable Credits.

The purpose of that memorandum was to provide guidance to Field Collection employees working TFRP cases affected by the Coronavirus Aid, Relief, and Economic Security (CARES) Act, the Families First Coronavirus Response Act (FFCRA), Notice 2020-65, as modified by Notice 2021-11, the Consolidated Appropriations Act, 2021 (CAA), and the American Rescue Plan Act of 2021 (ARP).

Currently, eligible employers may claim a nonrefundable credit for increasing research activities under IRC § 41, Credit for Increasing Research Activities. This credit has been in existence since the Economic Recovery Tax Act of 1981 (ERTA) was enacted on 08/13/1981. It allows for a percentage of expenditures paid or incurred for qualified research. The Protecting Americans from Tax Hikes (PATH) Act of 2015 (enacted on

12/18/2015), allowed certain qualified small businesses to use the research credit to offset payroll taxes. Prior to 2016, small businesses could only apply the research credit against their income tax liability.

CPM employees may receive cases returned from Appeals that contain tax periods affected by the COVID-19 legislation and/or where the taxpayer claimed the nonrefundable credit related to research activities (line 11a). This memorandum extends procedural guidance for addressing these cases.

Affected Tax Periods

The guidance in this memorandum applies to the following tax periods:

- Form 941 series for the quarterly return periods ending 06/30/2020 (01/202006), 09/30/2020 (01/202009), 12/31/2020 (01/202012), 03/31/2021 (01/202103), 06/30/2021 (01/202106), 09/30/2021 (01/202109), 12/31/2021 (01/202112), 03/31/2022 (01/202203), 06/30/2022 (01/202206), 09/30/2022 (01/202209), 12/31/2022 (01/202212), 03/31/2023 (01/202303), 06/30/2023 (01/202306), 09/30/2023 (01/202309), 12/31/2023 (01/202312), 03/31/2024 (01/202403)*
- Form 943 series for the annual return periods ending 12/31/2020 (11/202012), 12/31/2021 (11/202112), 12/31/2022 (11/202212), 12/31/2023 (11/202312)
- Form 944 series for the annual return period ending 12/31/2020 (14/202012), 12/31/2021 (14/202112), 12/31/2022 (14/202212), 12/31/2023 (14/202312)
- Form CT-1 for the annual return period ending 12/31/2020 (09/202012), 12/31/2021 (09/202112), 12/31/2022 (09/202212), 12/31/2023 (09/202312)

***Note:** While the Form 941 series for the quarterly return period ending 03/31/2020 is also impacted as a result of the deferral of the employer portion of social security tax and the employee retention credit (ERC) under sections 2302 and 2301 of the CARES Act, this quarterly return period is not included as an affected tax period for this memorandum.

The deferral of the employer portion of social security tax is under section 2302 of the CARES Act, and the ERC is under section 2301 of the CARES Act. These are the only two COVID-related items with potential spillover to the quarterly period ending 03/31/2020.

CPM Procedural Changes

CPM employees will continue to close cases returned as “not sustained” / “not responsible” no later than 10 calendar days after receiving the Appeals determination not to assess in accordance with IRM 5.7.10.6(2), CPM TFRP Case Processing, Appeals Cases – Controlling and Monitoring. There is no change in procedure for cases returned from Appeals as “not sustained” / “not responsible”.

CPM employees who receive a case returned from Appeals as either “sustained” or “partially sustained” will continue to update the ATFR system with the information listed in IRM 5.7.10.6(2).

Prior to generating the Form 2749 (IRM 5.7.10.6(3)), the CPM employee will send an email to *SBSE Coll Policy TFRP with a cc to their group manager (GM) and their local ATFR coordinator. The email should contain the following information:

- Employer name
- Employer identification number
- Related responsible party (RRP) taxpayer identification number (TIN)
- Tax periods proposed for assessment of the TFRP
- Earliest assessment statute expiration date (ASED)
- Case creation date on ATFR

Collection Policy, TFRP program analysts will review the calculation of the TFRP on the affected tax periods and notify the CPM employee of the results of the analysis. The TFRP program analysts will provide CPM employees with case-specific guidance based on the circumstances of each case.

IF	THEN
HQ Collection Policy advises to proceed with assessment processing	Complete the necessary assessment actions in accordance with IRM 5.7.10.6.
HQ Collection Policy advises to return the case to the RO	<ul style="list-style-type: none"> • Return the case to the RO. • Send an email requesting acknowledgment of receipt with a cc to RO's manager.

RO Procedures

ROs who receive a sustained or partially sustained Appeals case returned from CPM will send an email to the TFRP mailbox (*SBSE Coll Policy TFRP) with a cc to their group manager (GM) and their local ATFR coordinator. The email should contain the following information:

- Employer name
- Employer identification number (EIN)
- Related responsible party (RRP) taxpayer identification number (TIN)
- Tax periods proposed for assessment of the TFRP that contain a nonrefundable credit
- Earliest assessment statute expiration date (ASED)
- Case creation date on ATFR

Collection Policy, Employment Tax, TFRP program analysts will review the calculation of the TFRP for the tax periods with nonrefundable credits and notify the employee of the

results of the analysis. TFRP program analysts will provide the employee with case-specific guidance to address any calculation errors based on the circumstances of each case.

Contact: If you have any questions, you may contact Kerri Hansen, Employment Tax Program Manager, or a member of your staff may contact Javier Escudero or Jessica Márquez, Program Analysts.

CC: Director, Civil Enforcement Advice and Support Operations
Director, Collection Operations – Quality and Technical Support
Director, Specialty Collection – Offer in Compromise
Director, Specialty Collection – Insolvency
Director, Campus Collection
Director, Appeals, Case and Operations Support
Director, Office of Servicewide Penalties
Taxpayer Advocate Service
Assistant Division Counsel, SB/SE
IRS.gov (<https://www.irs.gov/>)