



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

SMALL BUSINESS / SELF-EMPLOYED DIVISION

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MEMORANDUM FOR EXAMINATION EXECUTIVES

FROM: Duane M. Gillen /s/ *Duane M. Gillen*  
Director, Examination Policy

SUBJECT: IRC Amendments Impacting Period of Time for Assessment

The purpose of this memorandum is to advise Examination staff of amendments to IRC § 6501, *Limitations on Assessment and Collection*. These amendments impact existing statutory exceptions to the normal three-year period of time for assessment and provide additional time to make an assessment, in certain situations. Please ensure this information is shared with all affected employees within your organization.

In general, two changes have been made:

1. Section 6501(e) was amended to add that an omission of more than \$5,000 in gross income attributable to specified foreign financial assets extends the period for assessment to 6 years from the later of the date the return was due (without regard to extensions) or filed, regardless of whether or not the specified foreign financial assets are reported as required under new § 6038D, *Information with Respect to Foreign Financial Assets*.

Effective Date:

The amendment to § 6501(e) applies to all returns as long as the period of time (determined without regard to the § 6501(e) amendments referenced above) for assessment of taxes has not expired as of March 18, 2010. Therefore, if the income tax return was filed after March 18, 2010, or the assessment statute was otherwise still open as of that date, and more than \$5,000 was omitted from gross income that is attributable to specified foreign financial assets, the statute remains open under § 6501(e) for a total of six years from the date the return was filed.

2. Section 6501(c)(8) was amended to provide that a taxpayer's failure to furnish information required by § 6038D, will extend the period for assessment to three years after the date the taxpayer furnishes the required information.

In addition, § 6501(c)(8) was amended to clarify that this statutory exception to the period of time for assessment, if applicable, applies to the entire return, not just those tax liabilities associated with the information not reported. If, however, the failure to furnish information required to be reported is due to reasonable cause and not willful neglect, the § 6501(c)(8) extended time for assessment applies only to the item or items associated with such failure.

Effective Date:

With limited exception (discussed below for returns subject to § 6038D), the amendment to the limitations period under § 6501(c)(8) applies as long as the period of time for assessment of taxes has not expired as of March 18, 2010.

For returns subject to the reporting requirements under § 6038D, the amendment to the limitations period under § 6501(c)(8) applies to tax years beginning after March 18, 2010. Form 8938, Statement of Specified Foreign Financial Assets, has been designated for reporting the information required by § 6038D.

This guidance will be incorporated into IRM 25.6.23, *Examination Process - Assessment Statute of Limitations Controls*, by March 09, 2013.

For examples and clarifying information please refer to Attachment A.

Assessment statute expiration date (ASED) alpha codes "NN" and "UU" apply to § 6501(e) and § 6501(c)(8), respectively. Please refer to IRM 25.6.23, Exhibit 3, for instructions on alpha coding ASEDS.

Questions and issues identified in the determination of an assessment statute on specific tax periods should be referred to the appropriate Technical Services staff and, if necessary, coordinated with Area Counsel.

If you have questions or need additional information, please contact Duane Gillen, Director, Examination Policy, or your staff members should contact Donald C. Bouquet, Program Manager, Examination Policy.

Attachment A: HIRE Act Examples and Clarifying Information

cc: Commissioner, Large Business and International Division  
Commissioner, Small Business/Self-Employed Division  
Commissioner, Tax Exempt and Government Entities Division  
Commissioner, Wage & Investment Division  
Chief, Appeals  
Director, Campus Compliance Services  
Director, Fraud/BSA  
Director, Specialty Programs

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**Attachment A**  
**HIRE Act Examples and Clarifying Information**

**IRC § 6501, Limitations on Assessment and Collection, was amended by the Hiring Incentives to Restore Employment Act, Public Law No. 111-147, on March 18, 2010, and further amended by the Education Jobs and Medicaid Assistance Act, Public Law No. 111-226, on August 10, 2010.**

**IRC § 6501(e)(1)(A)(ii) Examples – More Than \$5,000.00 Omission of Income Attributable to Foreign Financial Assets**

**In each example below, assume that the taxpayer failed to report taxable interest income in the amount of \$6,000 earned on a bank account maintained at a foreign financial institution.**

Example 1: Taxpayer filed his 2006 federal income tax return on or before April 15, 2007. Since the three-year statute of limitations on assessment had not expired on March 18, 2010, it will not expire before April 15, 2013.

Example 2: Taxpayer timely filed his 2005 federal income tax return on or before April 15, 2006. Unless the statute of limitations remains open on March 18, 2010, under some other exception to the three-year statute of limitations on assessment, IRC § 6501(e)(1)(A)(ii) does not apply since the statute of limitations will have expired prior to March 18, 2010.

Example 3: Taxpayer filed his 2005 federal income tax return on or before April 15, 2006. On December 31, 2008, the taxpayer consents to extend the statute of limitations on assessment to April 15, 2010. Since the extended statute of limitations on assessment had not expired on March 18, 2010, it will not expire before April 15, 2012.

Example 4: Taxpayer late-filed his 2005 federal income tax return on December 1, 2007. Since the three-year statute of limitations on assessment had not expired on March 18, 2010, it will not expire before December 1, 2013.

Example 5: Taxpayer late-filed his 2005 federal income tax return on December 1, 2006. Since the three-year statute of limitations on assessment expired before March 18, 2010, the six-year statute of limitations does not apply, unless some other exception to the normal three-year statute of limitations keeps the statute open until March 18, 2010.

Example 6: Taxpayer filed his 2005 federal income tax return on or before April 15, 2006. The return contains a more-than-25-percent omission of income, including an omission of more than \$5,000 of income attributable to a foreign financial asset. Because the statute of limitations is six years from the filing date of the return for both the “more-than-25-percent omission of income” and the “omission of more than \$5,000 of income attributable to a foreign financial asset,” the statute of limitations will not expire before April 15, 2012, and will not be extended even though the statute remained open on March 18, 2010.

**Attachment A**  
**HIRE Act Examples and Clarifying Information**

**Section 6501(c)(8) Clarifying Amendment**

The clarifying amendment referenced in the memorandum is not limited to information required to be reported under new § 6038D as § 6501(c)(8) also applies to information required to be reported by sections 1295(b), Qualified Electing Fund - Election; 1298(f), Special rules – Reporting Requirements; 6038, Information Reporting with Respect to Certain Foreign Corporations and Partnerships; 6038A, Information with Respect to Certain Foreign-Owned Corporations; 6038B, Notice of Certain Transfers to Foreign Persons; 6046, Returns as to Organization or Reorganization of Foreign Corporations and as to Acquisitions of Their Stock; 6046A, Returns as to Interests in Foreign Partnerships; and 6048, Information with Respect to Certain Foreign Trusts.

The clarifying amendment applies to all returns as long as the period of time for assessment of taxes has not expired as of March 18, 2010.

Example: The taxpayer filed the 200512 Form 1120 on March 15, 2006. During the taxable year 2005, the taxpayer acquired more than 10% of the outstanding stock of a foreign corporation, but failed to file a Form 5471, Information Return of U.S. Persons With Respect To Certain Foreign Corporations, as required to be filed to report the stock acquisition as prescribed by IRC § 6046. Normally, the period of time for assessment would have expired on March 15, 2009. Since the taxpayer failed to report the information required to be reported by IRC § 6046, the period of time for assessment would not expire on March 15, 2009, but would expire three years after the required information is actually reported by the taxpayer. The clarifying amendment to IRC § 6501 (c)(8) makes it clear that the open assessment statute applies to the entire return and not only to the tax deficiency attributable to the information which was not reported, unless the failure to provide the required information is due to reasonable cause and not willful neglect. If it is determined that reasonable cause for failing to report the information exists, the period of time for assessment is only open for the deficiency attributable to the information not reported under IRC § 6046, in this example.