



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

SMALL BUSINESS/SELF-EMPLOYED DIVISION

June 29, 2012

Control Number: SBSE-05-0612-001
Expiration: June 29, 2013
Impacted: IRM 5.21

MEMORANDUM FOR DIRECTOR, COLLECTION AREA OPERATIONS (NORTH ATLANTIC)
DIRECTOR, SB/SE CAMPUS COMPLIANCE SERVICES

FROM: Scott D. Reisher */s/* **Scott D. Reisher**
Director, Collection Policy

SUBJECT: Adjustments on International Assessments Regarding
Non-Resident Aliens

This memorandum provides interim guidance and procedures when completing an Automated Substitute for Return or Substitute for Return (ASFR/SFR) adjustment on an international assessment relating to non-resident aliens.

Ensuring compliance with U.S. tax law in international cases can be extremely complex. As an international revenue officer, you must consider a taxpayer's tax status, sources of foreign income and applicable treaties when determining taxpayer's filing requirements. The requirements of [IRM 5.1.15 Abatements, Reconsiderations and Adjustments](#) are applicable to all international cases, including cases involving U.S. citizens and green card holders living abroad, and non-resident aliens (NRAs) working in the U.S. or deriving income from U.S. sources.

For ASFR/SFR reconsiderations on U.S. citizens and resident aliens living abroad, an original Form 1040 must be submitted with appropriate schedules (i.e. Form 2555 Foreign Earned Income, Form 1116 Foreign Tax Credit). Any Form 3870 for a U.S. citizen, resident alien or green card holder must have an original return submitted.

Whenever possible when working with a NRA's assessment, an international revenue officer must also secure an original Form 1040NR with all supporting schedules to submit for an adjustment. However, there may be instances where securing an original return from an international taxpayer is not possible or practical. An adjustment request can be submitted without an original return if warranted by the circumstances. These cases require managerial

approval on the Form 3870. The group manager will concur that a return could not practically be secured and before approving, will review to assure that the revenue officer received answers to pertinent questions regarding citizenship, substantial presence test, and effectively connected income.

For non-resident aliens with an ASFR/SFR adjustment, when no return is secured further investigation is required by the international revenue officer to determine the taxability of the income. Besides analyzing sources of income and provisions of applicable treaties, you will have to verify a taxpayer's personal documentation or research internal and locator sources when appropriate. **Do not request abatement without actually communicating with the taxpayer and obtaining any needed information or applicable return.**

The key to recommending an adjustment on an NRA assessment is that you are not just taking the taxpayer's word for not being liable to file. In some cases, it may not be possible to exactly determine or verify a taxpayer's status for an international abatement, and it will be necessary to rely on a preponderance of evidence that reasonably seems to confirm what the taxpayer indicates to you by the taxpayer providing proof and/or the use of locator sources.

The following are guidelines that should be taken in adjusting ASFR/SFR assessments regarding NRAs.

Note: Contact with the taxpayer or power of attorney is mandatory for any abatement.

1. Determine taxpayer's citizenship,
 - To prove citizenship IDRS CC MFTRAU, passport or green card may be used.
 - A copy of a foreign passport provided by the taxpayer to justify an abatement is not sufficient, but can be submitted as part of supporting evidence if it is complete and current with all pages present.
2. Determine if there is effectively connected income,
 - Effectively connected income is determined by taxpayer involvement in a U.S. trade or business.
 - Activities that constitute being engaged in a U.S. trade or business include personal services, self-employment, partnership income, income as a beneficiary of an estate or trust, or certain activities relating to trading in securities.
3. Determine if taxpayer meets the substantial presence test,
 - An individual meets this test if he has been present in the U.S. for at least 183 days during a three-year period that includes at least 31 days in the current year.
 - Confirmation must be made when taxpayers claim that they have not been in the U.S., and therefore are not liable for U.S. tax. You must document the application of the substantial presence test in all abatement recommendations.
 - There are investigative tools that you can use to determine a person's time in the U.S., such as Treasury Enforcement Communication System (TECS) historical travel data and Department of State records of registration with a U.S. Consulate in a foreign country. Although these tools do not provide an

absolutely complete record of a taxpayer's time in the U.S., it may help indicate when a taxpayer was present in the country. It does provide both arrival and departure information on NRAs.

4. Determine if taxpayer paid the taxes to a foreign government, and
 - Taxpayer may indicate that they paid the taxes to the foreign government and do not owe the U.S. taxes. Taxpayer must provide evidence of payment in a form of a cancelled check, documentation of a wire transfer, a copy of the relevant return filed the foreign country, or other indication of taxes withheld if allowed by treaty.
5. Determine if there is an applicable treaty.
 - Taxpayer may claim that the income is not taxable based on the treaty with the foreign country. The taxpayer may provide a copy of Form 8233, or W8-BEN, which would show that the taxpayer claimed to be a NRA with respect to U.S. wages or other investment income.

Note: NRAs are generally not required to file Form 8833 disclosing a treaty claim. The burden is on the taxpayer, however, to prove that the taxpayer is a resident, and not merely a national or citizen of a country with which the United States has a treaty.

In the absence of a filed Form 1040NR, recommending an abatement of a NRA assessment requires verification, rather than solely relying on the taxpayer's claim of not being subject to U.S. taxation. The preponderance of evidence must go beyond merely relying on the taxpayer's statements.

If you have any questions, please contact me, or a member of your staff may contact Gary Vinluan, Senior Policy Analyst, Global Strategic Compliance.

cc: www.irs.gov