

IRM PROCEDURAL UPDATE

DATE: 05/27/2015

NUMBER: WI-21-0515-0918

SUBJECT: BMF International Accounts Management - Form 8891 is obsolete

AFFECTED IRM(s)/SUBSECTION(s): 21.8.2

CHANGE(s):

IRM 21.8.2.1.1 Added "Note" that Form 8891 is obsolete.

1. As a result of the ramp-down of the Philadelphia Submission Processing Campus (PSPC), International Business Master File (BMF) return processing moved in its entirety to the Ogden Submission Processing Campus (OSPC) on January 1, 2007. However, Philadelphia Accounts Management Campus (PAMC) continued to process BMF International Accounts Management work until the work was moved to the Cincinnati and Ogden Accounts Management Campus in February 2013.
2. Correspondence and/or amended returns involving the following issues are considered "BMF International Issues" and are worked at CAMC and OAMC:

EXCEPTION: Inquiries and notices on Form 3520/3520-A and requests for reasonable cause relief from systemically assessed Form 5471/5472 penalties are considered "BMF International Issues" but are worked at OAMC only.

- Form 1120-F, Form 1120-FSC, Form 940-PR, Form 941-PR, Form 941-SS, Form 943-PR, Form 944-PR, and Form 944-SS

NOTE: Form 944-PR and Form 944-SS were discontinued beginning with tax year 2012. Taxpayers who previously filed these forms can file Form 944/Form 944(SP) or request to file Form 941-PR or Form 941-SS.

- Form 8288 series
- Form 8804, Form 8805, and Form 8813
- Foreign Withholding Form 1042 series
- Form 843 Visa claims
- Form 1120X with Document Locator Number (DLN) Filing Location Codes 98, 66, 60 or 78
- Form 8873 Extraterritorial Income Exclusion
- Form 1120X Foreign Tax Credit carryback claims

- Form 1118 Foreign Tax Credit attached to Form 1120-F or Form 1120-FSC
- Amended Form 1040NR Fiduciary
- Form 8891

NOTE: Form 8891 is obsolete as of December 31, 2014 per Rev. Proc. 2014-55.

- Spanish language correspondence related to BMF International
- 3. Non-Master File (NMF) account processing also ceased at the Philadelphia Submission Processing Campus (PSPC) in 2006. NMF is now centralized at the Cincinnati Submission Processing Campus (CSPC).

NOTE: The Campus Program Locator Guide provides information on the continuing (Wage and Investment) W&I and Small Business Self Employed (SBSE) program consolidation and centralization. The guide is on SERP at: http://serp.enterprise.irs.gov/databases/who-where.dr/transshipment.dr/campus_locator_guide/01_cplg_toc.htm

IRM 21.8.2.1.3 Added link to the FATCA website.

1. The following websites are helpful when researching international issues:
 - Submission Processing website at <http://win.web.irs.gov/SP/index.htm>
 - IRC listed by Code section number at <http://www.law.cornell.edu/uscode/text>
 - Tax treaties on line at <http://www.irs.gov/business/international/article/0,,id=96739,00.html>
 - Various international topics at <http://www.irs.gov/business/international/index.html>
 - Foreign Account Tax Compliance Act at <http://www.irs.gov/Businesses/Corporations/Foreign-Account-Tax-Compliance-Act-FATCA>
 - IRS FBAR and Title 31 at <http://www.irs.gov/business/international/index.html>
 - IRS Bulletins, Notices, Announcements, etc. at <http://www.irs.gov/irb/>
 - U.S. Citizenship and Immigration Services (USCIS) website at <http://www.uscis.gov>
 - Lexis-Nexis at <http://www.lexisnexis.com/clients/irshome/>
 - The Social Security Administration website <http://www.ssa.gov/>
 - Qualified Intermediaries at <http://www.irs.gov/business/corporations/article/0,,id=150934,00.html>
 - Electronic Tax Law Assistance at <http://www.irs.gov/help/page/0,,id=133197,00.html>
 - United States Department of State at <http://www.state.gov/>
 - International dialing codes at <http://www.countrycallingcodes.com/>
 - IR Web research center at <http://rnet.web.irs.gov/index1.htm>

2. Assistors staffing the International line **DO NOT** use the Telephone Transfer Guide (TTG) to transfer calls. They can use "The Source for Telephone Numbers" at: <http://gatekeeper.web.irs.gov/plList.asp> to provide the correct toll-free number to the caller. If the caller is calling outside the United States the assistor should perform the needed resolution. If the assistor is not trained or the caller does not want to call back, complete Form 4442, *Inquiry Referral*. See IRM 21.3.5.4, *Referral Procedures*, for complete procedures.

NOTE: International assistors may transfer calls within the International line using local procedures.

3. **Assistors staffing any toll-free line** should not transfer calls to the International line (267-941-1000). They can provide the International **non toll-free number** or any of the numbers below to a caller for help with international issues. If the caller does not want to call back, offer to prepare Form 4442, *Inquiry Referral*. Route to BMF International at the Ogden campus via fax at **##** (number is for internal use only). For a list of BMF international issues see IRM 21.8.2.1.1, *Campus Consolidation and Program Centralization*. For more information on the referral process see IRM 21.3.5.4, *Referral Procedures*.

| Title or Organization | Phone | Fax |
|--|--|---|
| International (Taxpayer Customer Service) | 267-941-1000** | ## (number is for internal use only) |
| Automated Collection System (ACS) | 267-941-1004** | |
| Automated Underreporter (AUR) | 267-941-1026** | 267-941-1023 |
| Electronic Federal Tax Payment System (EFTPS) | 303-967-5916 | |
| International Estate and Gift | 866-699-4083 (toll-free) 859-669-2349* (not toll-free) | |
| Excise Tax (Form 720, Form 730, Form 2290 and Form 8849) | 859-669-5733 | |
| FBAR and Title 31 Helpline | 866-270-0733 (toll-free) 313-234-6146 (not toll-free) | |
| International Examination | 267-941-1037** | 267-941-1463 |
| Offer in Compromise (OIC) - General | 267-941-1004** | 787-759-5466 |
| (OIC) - Accepted Offers Only | 631-447-4018 | |
| Taxpayer Advocate Service - English speaking | 787-522-8601 | 787-522-8690 |
| Taxpayer Advocate Service - Spanish speaking only | 787-522-8600 | |

* This telephone number goes to voice mail but messages are checked daily. The International Estate and Gift e-mail address is sbse.eg.intl@irs.gov, and can be provided.

REMINDER: Numbers marked with (**) CANNOT be accessed using IRS phones.

4. Current International Post contact information can be found on the Large Business and International Division, (LB&I) website at http://www.lmsb.irs.gov/international/dir_treaty/eoi_overseas/posts.asp

IRM 21.8.2.3.8.1 Updated COBRA information.

1. Adjustments required on these forms are made using normal BMF procedures found in IRM 21.7.2.4, *Employment Tax Returns Procedures*.
2. The Master File Tax Code (MFT) for Form 941-PR and Form 941-SS is **01**.
3. The MFT for Form 943-PR is **11**.
4. The MFT for Form 944-PR and Form 944-SS is **14**.
5. The due dates are as follows:

| Form | Due Date |
|--|--|
| Form 941-PR | April 30, July 31, October 31, and, January 31 |
| Form 941-SS | April 30, July 31, October 31, and, January 31 |
| Form 943-PR, Form 944-PR, and Form 944-SS. See the "Note" in IRM 21.8.2.1.1. | January 31 |

6. Blocking Series **00** is used with the original return; **15** without the original return.
7. Item Adjustment Codes (see IRM 21.7.2.4.1, *Item Reference Numbers (IRN's) and Credit Reference Numbers (CRN's) - Employment Taxes*.

| | |
|------------------|--|
| REMINDER: | IRN 111 (total income tax withheld) is not used with Form 941-PR, Form 941-SS, and Form 943-PR. Any income tax withheld is paid separately to their government, unless they have an employee in the United States. |
|------------------|--|

8. CP 175/185 notices, which were generated for unexplained adjustments to withholding, tips, or FICA, are no longer issued beginning in January, 2009.
9. When agricultural employers file Form 941-PR, but should file Form 943-PR, refer to IRM 21.7.2.4.8.2, *Incorrect Type of Return Filed - Form 941 and 943*.
10. Prior to tax year 2009, employers could file Form 944 series returns, instead of Form 941 series returns, only if the IRS notified them in writing. Beginning with tax year 2009, in order to file Form 944 series returns, taxpayers will be identified during EIN assignment or will contact the Service directly to inquire

about the Form 944 program. Refer to IRM 21.7.2.4.9, *Form 944, Employer's Annual Federal Tax Return*, for instructions on adjusting accounts where Form 944 filers file Form 941. Beginning in calendar year 2010, the Form 944 program is voluntary. Beginning with tax year 2012 Form 944-PR and Form 944-SS are obsolete. See the "Note" in IRM 21.8.2.1.1.

11. When adjusting a tax account using REQ54, or transferring credits using ADD24/ADD34/ADD48, see IRM 21.8.2.1.11.
12. Under the Hiring Incentives to Restore Employment (HIRE) Act, enacted March 18, 2010, a new tax benefit is available to employers who hire certain previously unemployed workers ("qualified employees") in their trade or business. The act provides employers with an exemption from the employers 6.2 percent share of social security tax on wages paid to qualified employees, effective for wages paid from March 19, 2010, through December 31, 2010. See IRM 21.7.2.5.20, *HIRE — Payroll Tax Exemption*.
13. Premium assistance for The Consolidated Omnibus Budget Reconciliation Act (COBRA) benefits can be claimed on Form 941-PR and Form 941-SS for 2009. The forms contain new lines 12A for COBRA premium assistance payments and 12B for the number of individuals provided COBRA assistance. Effective for tax periods beginning after December 31, 2013, the credit for COBRA premium assistance payments cannot be claimed on lines 12A. Instead, Form 941-X will be filed to claim the COBRA premium assistance credit. Additional information on COBRA and procedures for adjusting COBRA amounts can be found in IRM 21.7.2.5.19, *Premium Assistance for COBRA Benefits*.

IRM 21.8.2.4 Updated line numbers.

1. On January 1, 1995, the Social Security Domestic Employment Reform Act (SSDERA) of 1994 was enacted. As a result, domestic service employment taxes are now collected with income tax rather than employment taxes.

NOTE: See IRM 21.7.2.4.8.1, *Wages Subject to FICA and Income Tax Withholding*, for the cash wages thresholds not subject to FICA and Income Tax Withholding.

2. Domestic employees under the age of 18 are excluded from coverage beginning in 1995, if being a "Domestic Employee" is not their principal occupation. This provision is effective regardless of the amount of wages paid to the employee under 18.

NOTE: A "student" is considered an occupation.

3. Wages paid after December 31, 1994 are reported on the employer's Schedule H/H-PR attached to Form 1040, Form 1040A, Form-NR, Form-PR, Form 1040-SS, or Form 1041. Employers not liable for a Form 1040/A/NR/PR/SS must file a "stand-alone" Schedule H/H-PR.

NOTE: On a "stand-alone" Schedule H/H-PR, Submission Processing prepares a dummy Form 1040/A/NR/PR/SS with a Return Processing Code of "Y" or Form 1041 for BMF accounts.

4. Employers claiming the additional tax with their individual taxes report the tax on Line 60a on the Form 1040, Line 59a on the Form 1040NR, or Line 4 on the Form 1040-PR or Form 1040-SS. Employers claim the additional tax on Form 1041 using Line 23.
 - a. This additional tax is included in the TC 150 amount.
 - b. Use the appropriate Blocking Series and RC 050 for IMF to adjust employment taxes from Schedule H/H-PR.
5. SSDERA requires the Schedule H/H-PR be filed for a calendar year. Fiscal year filers must report wages paid on a calendar year basis.

IRM 21.8.2.7.2 Updated information and added links to Blocking Series information.

1. When an inquiry is received regarding a refund of erroneously withheld FICA tax, verify that the claim is valid, i.e.,:
 - o Form 1040NR filed within the statutory period
 - o Visa is exempt from FICA tax
 - o Employee has provided a statement from the employer indicating the amount of the reimbursement the employer provided (if any) and the amount of the credit or refund the employer claimed, or was authorized by the employee to claim
2. When a claim is filed, but research shows that there is no account on record and that no tax return was filed, do not process the claim. Correspond using Letter 916C, or Letter 513C to request the filing of Form 1040NR/NR-EZ. One of the following statements can be used:

Use the statement that is applicable

Because our records do not indicate a Form 1040NR being filed on your behalf, we are unable to process your claim. The Form 1040NR is an essential part of the erroneous withheld FICA process and therefore necessary to process your claim. If your Form 1040NR has been filed since submitting this claim, please resubmit this claim with the indication "1040NR". If you have not filed, complete and submit a Form 1040NR with a copy of this claim we are returning to you, and this letter. Please indicate "1040NR filed" on your 843 claim.

or

Because we do not have a record of receiving an income tax return for this tax period, we are unable to process your claim at this time. Please resubmit your claim six weeks after the return is filed.

3. When the employee filed a tax form other than the Form 1040NR, reject the claim as follows:

1. Input TC 290 .00 with the appropriate Blocking Series. See IRM 21.5.1.5.3, *CIS Source Documentation*, and Document 6209, *IRS Processing Codes and Information*, for the appropriate Blocking Series.
2. Issue Letter 916C with the following statement:

| Letter Paragraphs |
|---|
| Because our records indicate that you filed a Form 1040, U.S. Individual Income Tax return, we are unable to process your claim. The filing of the Form 1040 indicates that you are a resident of the United States for tax purposes. As a resident of the United States, you are not exempt from FICA Tax. |
| or |
| Because our records indicate that you filed a tax form other than the Form 1040NR, we are unable to process your claim. The Form 1040NR is an essential part of the erroneously withheld FICA tax process because it identifies you as a Nonresident Alien. Because you did not file the Form 1040NR declaring your Nonresident Alien status, you are not exempt from FICA Tax. |

EXCEPTION: Do not disallow claims from F-1 or J-1 Visa holders who elect under IRC § 6013(g) or IRC § 6013(h) to file a joint return with their spouse as a resident alien. These claimants continue to be exempt from FICA under IRC § 3121(b)(19) or IRC § 3121(b)(10).

4. A teacher, researcher or trainee in the United States with a **J** or **Q** visa is not automatically exempt from FICA tax:

- a. If the teacher, researcher or trainee has visited the U.S. during any two of the six preceding calendar years as either a student, teacher, researcher or trainee, then he/she is no longer an "exempt individual" for the current year for purposes of the substantial presence test. Therefore, he or she must begin counting days from his/her very first day of arrival in the United States.
- b. After 2 years, a nonstudent under a J-1 visa status who was exempt from social security and Medicare taxes during his first two calendar years in the United States is considered a U.S. resident for tax purposes, and therefore is liable for FICA tax. The claim is not valid and must be disallowed.

NOTE: Document I-94, Arrival/Departure Record, contains the entry and departure dates to determine if they have exceeded the qualification period.

- c. If it is determined that the claim is not valid, input TC 290 .00 with Blocking Series 98 or 99 to disallow the claim and issue Letter 105C with the following fill-in:

| Letter Paragraph |
|-------------------------|
|-------------------------|

We have disallowed your claim because in accordance with Internal Revenue Code §7701(b) you meet the substantial presence test and are considered a resident alien. Therefore, you do not qualify for exemption from FICA tax on wages.

- d. If the Visa status changes from an exempt F-1, J-1, M-1, or Q Visa type, the holder is then liable for social security and Medicare taxes (in accordance with IRC § 7701(b)) from the day the status is changed. For example, a change to H1 visa type.

NOTE: T/P must provide documentation of exempt earnings up to the date the visa status changed. A copy of a pay statement with cumulative tax information is sufficient to support the claim for the exempt portion of the earnings.

- e. Dual Status filings may occur when residency status changes. Use care to properly adjust accounts when both a Form 1040 and a Form 1040NR are filed.
- 5. A student in the United States with an **F**, **J**, **M**, or **Q** visa is not automatically exempt from FICA tax.
 - a. Generally, a student is not exempt from FICA if he or she was exempt as a student, teacher, researcher or trainee for more than any part of five calendar years.

NOTE: Check for Form 1040NR filing. Disallow if Form 1040NR was filed for more than 5 consecutive years.

- b. A student who has been exempt more than five years must be subject to the substantial presence test.
- c. If this individual meets the substantial presence test for the calendar year, he/she is considered a U.S. resident for tax purposes and therefore liable for FICA tax. The claim is not valid and must be disallowed. Input TC 290 .00 with Blocking Series 98 or 99 to disallow the claim and issue Letter 105C with the following fill-in:

Letter Paragraph

We have disallowed your claim because in accordance with Internal Revenue Code §7701(b) you meet the substantial presence test and are considered a resident alien. Therefore you do not qualify for exemption from FICA tax on wages.

- 6. A student qualifies for exemption from FICA tax provided he or she can show evidence that he or she does not intend to reside permanently in the United States. Evidence may consist of, but is not limited to:
 - a. Maintaining a tax home in a foreign country during the year
 - b. Maintaining more significant contact (closer connection) with the foreign country, where the student has a tax home, than with the U.S.

- c. Being present in the U.S. for less than 183 days during the year (usually occurs in the final year of education or training)

NOTE: These requirements are further explained in Publication 519, *U.S. Tax Guide for Aliens*.

7. A claim received after the statute for refund has expired (i.e., a claim that was not timely filed) is not valid and must be disallowed. Check postmark date to determine timeliness. See IRM 21.8.2.1.5
 - a. Send a 105C letter and state that the claim was not timely filed (include appeal rights).
 - b. Input a TC 290 .00 with Blocking Series 98/99 on the requester's tax account to file the claim.
8. A claim received with a **J-2, F-2, H-1, or TN** visa is not a valid claim and must be disallowed.
 - a. Input a TC 290 .00 with Blocking Series 98/99 on the requester's tax account.
 - b. Send 105C letter with the following fill-in:
"We have disallowed your claim because, in accordance with Title 26, §3121(b), your entry visa does not qualify you for exemption from FICA tax on wages."
9. A teacher, researcher, or trainee may qualify for exemption from FICA tax provided he or she is a resident of a country with which we have a Totalization Agreement - Bilateral Social Security Agreement, and provides a copy of the statement from the foreign country or the U.S. Social Security Administration exempting the individual's pay from U.S. social security tax but not foreign social security tax. See IRM 21.8.2.8, *Totalization Agreement - Bilateral Social Security Agreements*, for additional information.

IRM 21.8.2.9.6.1 Updated "Title" and information to include Chapter 4 and clarified Chapter 3 information.

180-Day interest-free Period for Chapter 3 or 4 Withholding

1. P.L. 111-147, the Hiring Incentives to Restore Employment Act (HIRE) enacted on March 18, 2010, amended IRC 6611(e), Interest on Overpayments by adding new paragraph IRC 6611(e)(4) which added chapter 4 to the Code, consisting of sections 1471 through 1474 of the Code and commonly referred to as "FATCA" (Foreign Account Tax Compliance Act) or "chapter 4".
2. IRC 6611(e)(4), "Certain Withholding Taxes", provides that in the case of any overpayment resulting from tax deducted and withheld under Chapter 3 or 4 of the Code, Code section 6611(e)(1), (2), and (3) shall be applied by substituting "180 days" for "45 days" each place it appears.

NOTE: For further information regarding Chapter 3 or 4 withholding refer to IRM 20.2.4.7.6, *180-Day Rule*.

3. This means that if a taxpayer makes a claim on a return for credit or refund for any overpayment of tax attributable to withholding under chapter 3 or 4, and such overpayment is refunded within 180 days after such claim is filed, no interest shall be allowed on such overpayment from the date the claim is made until the day the refund is made.
4. Chapter 3 requires withholding agents to withhold on certain payments of fixed or determinable annual or periodical income from sources within the United States to foreign person. Other transactions related to IRC Chapter 3 withholding are dispositions of U.S. real property interests (subject to Section 1445) and withholding on income effectively connected with the active conduct of a U.S. trade or business (under Section 1446).
5. Chapter 4 requires withholding agents to withhold on withholdable payments to foreign financial institutions and non-financial foreign entities that do not meet certain reporting requirements under sections 1471 and 1472.
6. Refunds of Chapter 3 or 4 withholding can be claimed on the beneficial owner's income tax return (e.g., Form 1040-NR, 1120-F), a partnership return when the partnership is claiming a refund of amounts withheld under Section 1446, or a Form 1042 when certain withholding agents (e.g. a qualified intermediary) are claiming a collective refund on behalf of their account holders, partners, owners, or beneficiaries.
7. Master File programming has been completed to account for the 180-day period on overpayments of Chapter 3 or 4 withholding on original returns, amended returns, and IRS-initiated adjustments. For amended returns, Master File will apply the 180-day processing routine of IRC section 6611(e)(2) to an overpayment originating from TC 766 with Credit Reference Number (CRN) 330 through 333. If priority code 3 is also included on the record, the 180-day processing routine of IRC section 6611(e)(3) will be employed. For additional information on the 180-day interest-free period, refer to IRM 20.2.4.7.6, *180-Day Rule*.

NOTE: Taxpayers filing Form 1120-F are required to indicate the portion of its claimed overpayment attributable to Chapter 3 or 4 on Schedule W.

IRM 21.8.2.9.6.2 Updated information on refundable credits and the link to the instructions.

1. Refundable Credits are claimed on Form 1120-F, *U.S. Income Tax Return of a Foreign Corporation*, lines 5a through 5i. The type of credits claimed on line 5i are:

- Form 1042-S, *Foreign Person's U.S. Source Income Subject to Withholding*, from line 12, page 2. See the instructions in "Section I" of Form 1120-F, *U.S. Income Tax Return of a Foreign Corporation*, for additional information.
- Form 8805, *Foreign Partner's Information Statement of Section 1446 Withholding Tax*.
- Form 8288-A, *Statement of Withholding on Dispositions by Foreign Persons of U.S. Real Property Interests*.
- Form 1099 (various).

2. Refundable Credits are claimed on Form 1120-FSC, *U.S. Income Tax Return of a Foreign Sales Corporation*, lines 2a through 2g. The type of credits claimed on line 2g are:

- Form 1042-S, *Foreign Person's U.S. Source Income Subject to Withholding*.
- Form 1099 (various).

3. These refundable credits can be allowed without prior Examination Classification. To claim refundable credits, the recipient's copy of the information return, Form 1042-S, Form 8805, Form 8288-A, and withholding certificate (Form W-8BEN, e.g.) must be attached.

EXCEPTION: If supporting documents are not attached see Paragraph 5 below.

CAUTION: Withholding agents may make payments to disregarded entities but they should not include them as a recipient on Form 1042-S unless the recipient is an entity treated as a resident of a country for which it may claim a reduced rate of withholding under an applicable income tax treaty. The withholding agent must file a corrected Form 1042-S if they do. See **Payments Made to Persons Who Are Not Recipients** on Page (11) of the Form 1042-S Instructions at: <http://core.publish.no.irs.gov/instrs/pdf/i1042-s--2015-00-00.pdf>, for additional information. If you cannot match the name and TIN on the Form 1042-S to the recipient's account, do not allow the credit(s). Follow no consideration procedures in IRM 21.5.3.4.6.3, *No Consideration Procedures*. Advise the filer of the Form 1120-F the claim cannot be considered until a corrected Form 1042-S is filed.

4. A statement or document from a withholding agent in lieu of a Form 1042-S will not be accepted.

NOTE: These refundable credits are considered Chapter 3 Withholding credits and are subject to the 180-day interest-free period. For more information on the 180-day interest-free period refer to IRM 20.2.4.7.6, *180-Day Rule*

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6. Before allowing Form 1042-S refundable credits you must research the EIN of the withholding agent to ensure Form 1042 has been filed to report and pay at least the amount of the credit claimed on the Form 1042-S. See IRM 21.8.2.12.2.2, *Claims for Tax Withheld at Source*, for complete procedures pertaining to amended returns claiming refunds or credits for overwithheld amounts.
7. To allow the credit, use TC 290 .00 and the appropriate Credit Reference Number (CRN). The CRN will generate TC 766 for the amount of the credit. To reverse the credit, use TC 290 .00 and the appropriate CRN with a (-). The CRN will generate TC 767 for the amount of the credit. There is no CRN for Form 1099, use TC 766 to allow the credit or TC 767 to reverse the credit.

CAUTION: It should be noted that no refund is allowed if the withholding agent does not make any deposit of tax (i.e., the withholding reports a liability of tax, but makes no deposits of tax). If the withholding agent has not submitted the proper Form 1042 and paid at least the amount of the credit being claimed on Form 1042-S, no consider the claim. See IRM 21.5.3.4.5, *Math and Master File Verification of Claims and Amended Returns*, as an additional reference for basic BMF account resolution/adjustment procedures.

8. Masterfile programming was implemented as of April 2013, on Form 1120-F, to ensure only overpayments of Chapter 3 or 4 withholding are given the 180-day interest-free period. Therefore, the CRN on the account will depend on when the credit generated.

CAUTION: Exercise caution when adjusting tax or refundable credits; review the account to determine the correct amount of refundable credits and the appropriate CRN.

9. Before programming:
 - o CRN 330 - Form 1042-S
 - o CRN 331 - Form 8805
 - o CRN 332 - Form 8288-A
 - o CRN 333 - Amended Form 1042-S
10. After programming:
 - o CRN 330 - Generates the overpayment resulting from tax deducted and withheld under Chapter 3 or 4, see Form 1120-F (Line 8b).
 - o CRN 334 - Generates from the sum of Line 5f, Line 5g, Line 5h, Line 5i, any amount to the right of Line 5i minus Line 8b.

CAUTION: Since CRNs 331, 332 and 333 no longer generate on Form 1120-F, AM assistors will take no action to adjust the account for the purpose of creating these CRNs. Any adjustments required to these credits will be made using CRN 330.

IRM 21.8.2.12 Updated FATCA information.

1. This section has been updated to reflect changes made to the Form 1042, Form 1042-S, Qualified Intermediary Agreement, and refund procedures associated with the implementation of the Foreign Account Tax Compliance Act (FATCA) in July 2014.
2. Income that is effectively connected with the conduct of a trade or business within the United States by a nonresident alien individual or foreign corporation is subject to the same income tax rates that apply to U.S. Citizens, residents, and domestic corporations, per IRC § 871(b). (See IRM 21.8.1.11.10, *Effectively Connected Income*.)
3. Income not effectively connected with the conduct of a trade or business in the United States is subject to a 30% tax rate (or lower treaty rate) whether or not the taxpayer engages in a trade or business in the United States, per IRC § 871(a). (See IRM 21.8.1.11.11, *Non-Effectively Connected Income*.)
4. The Deficit Reduction Act of 1984 provides for repeal of the 30% tax on interest received by foreign persons on certain portfolio investments.
5. IRC § 1441(a) and IRC § 1442(a) require the withholding of income tax at the source on certain amounts paid to nonresident alien individuals, foreign partnerships, and foreign corporations. IRC § 1471 and IRC § 1472 require withholding on withholdable payments made to certain foreign financial institutions and non-financial foreign entities that have not met the reporting requirements under those sections.
6. See Publication 515, *Withholding of Tax on Nonresident Aliens and Foreign Entities*, for a more detailed explanation of withholding requirements.

IRM 21.8.2.12.1 Updated withholding agent and withholding tax information.

1. A withholding agent is any person that has custody or control of an item of income of a foreign person subject to withholding. A withholding agent may be an individual, a trust, an estate, partnership, corporation, government agency, association, or tax-exempt foundation, whether domestic or foreign.
2. Withholding agents generally must withhold tax at a rate of 30% on items of fixed determinable annual or periodical income from sources within the United States paid to nonresident alien recipients and may also have withholding requirements under IRC § 1471 and IRC § 1472 on withholdable payments made to foreign entities and account holders of foreign financial institutions. See Publication 515, *Withholding of Tax on Nonresident Aliens and Foreign Entities*.
 - a. A "nonresident alien" includes any foreign individual, fiduciary, partnership, corporation, private foundation, organization, association or charitable institution.
 - b. Income qualifying as a scholarship, per IRC § 117(a), requires withholding of taxes at a rate of 14% if the nonresident alien is temporarily present in the United States on an F, J, M, or Q Visa (a non-degree candidate).
 - c. Income for compensation from personal services that is effectively connected with U.S. trade or business is **exempt from withholding** if

the recipient is a foreign partnership or foreign corporation. However, the income is still taxable, subject to estimated tax, and a tax return must be filed to report the income and pay any tax due at graduated rates.

3. The withholding agent may withhold at a lower treaty rate if the nonresident alien recipient is a resident of a country that has a tax treaty in effect with the United States. In order to be eligible for the reduced withholding, the nonresident alien must prove he/she is a resident of the treaty country, for income tax purposes.
4. The above rules do not apply to a nonresident alien spouse of a U.S. citizen or resident who makes an election to be treated as a resident for income tax purposes and files a joint return and reports income from all U.S. and foreign sources.

NOTE: Scholarships, grants, fellowship grants, prizes, and awards received by a nonresident alien (person other than a U.S. person) from a foreign government, agency, political subdivision, person or international organization (any foreign entity) for the purpose of study within the United States, is treated as foreign source income. This income, being foreign source income, does need to be claimed or reported.

IRM 21.8.2.12.2 Updated Form 1042 information.

1. Form 1042 is the annual taxable return used by withholding agents to report tax withheld on U.S. source income paid to certain nonresident alien individuals, and corporations, etc.
2. The Form 1042-T serves as a transmittal for Form 1042-S returns, which are information returns filed with the IRS and furnished to the recipient that are used to report income paid to the foreign person. The Form 1042-T is Tax Class 5 and Document Code 01.
3. A withholding agent must file a Form 1042 by March 15th in order to pay and report taxes withheld. Form 1042 is a Master File annual tax return (NMF for 1984 and prior), filed only for the calendar year and cannot be filed as a fiscal year return.
4. Form 1042 is equivalent to the Form 945, Annual Return of Withheld Federal Income Tax, which is a withholding tax return only.
5. Form 1042 is processed using a Tax Class of 1, a Doc Code of 25, and one of the following File Locations Codes:
 - o FLC 29 - If the withholding agent is located within the U.S.
 - o FLC 60 - If the withholding agent is located outside of the U.S.
 - o FLC 78 - If the withholding agent is located in one of the U.S. territories, territories, or the Commonwealth of Puerto Rico

IRM 21.8.2.12.2.1 Updated Form 1042-S information.

1. The withholding agent issues a Form 1042-S, *Foreign Person's U.S. Source Income Subject to Withholding*, which is an information return similar to a Form 1099.
2. Form 1042-S provides the pertinent data in verifying that the withholding is correct including:
 - o Income Code (identifies type of income paid)
 - o Gross Income Paid
 - o Chapter 3 or 4 exemption code/tax rate. The exemption codes are located on the back of the Form 1042-S.
 - o Withholding Allowances (for income Codes 15 and 16)
 - o Net Income
 - o Federal Tax Withheld
 - o Tax withheld by other agents
 - o Tax paid by withholding agent
 - o Total withholding credit
 - o Amount repaid to recipient
 - o Withholding agent's information
 - o Recipient's information (including the Country Code of residency of the recipient for tax purposes)
3. Form 1042-S returns can be filed on paper if there are less than 250 income recipients for which data must be reported. If 250 or more Form 1042-S returns are submitted, withholding agents are required to file them electronically. All financial institutions must file Forms 1042-S electronically (regardless of how many forms are being filed).
4. Electronic submissions of 1042-S forms are filed using the Filing Information Returns Electronically (FIRE) System. FIRE, which is located at <http://fire.irs.gov>, is a Web based system so it is available 24 hours a day - 7 days a week. See Pub 1187, *Specifications for Electronic Filing of Form 1042-S, Foreign Person's U.S. Source Income Subject to Withholding*, for further information.
5. Forms 1042-S, whether filed on paper or electronically, must be filed with the Internal Revenue Service by March 15. Taxpayers may request a 30 day extension of time to file Form 1042-S by filing a completed Form 8809, *Application for Automatic Extension of Time To File Information Returns*. An additional 30 day extension may be requested by submitting a second Form 8809. Generally, requests for additional time are only granted in cases of extreme hardship or catastrophic event. See Pub 1187, *Specifications for Electronic Filing of Form 1042-S, Foreign Person's U.S. Source Income Subject to Withholding*, for rules on filing requests for an extension of time to file electronically.

NOTE: The Form 8809 does not extend the time for filing Form 1042.

6. Paper Form 1042-S returns are filed at the Ogden Submission Processing Campus with the Form 1042-T being used as the paper transmittal form for paper Form 1042-S returns.

7. For assistance with electronic filings or extensions of time to file, taxpayers can contact the IRS by e-mail at mccirp@irs.gov or by phone at the following numbers:
 - o 866-455-7438 (toll free)
 - o 304-263-8700 (toll call)
 - o 877-477-0572 (fax)
 - o 304-579-4105 (international fax)
8. The Form 1042 is the taxable return. It should reflect the total of all taxes withheld and paid over to the IRS, as reflected on the Forms 1042-S.
9. The Form 1042-S is processed with FLC 60, Tax Class 5, and Document Code 02 for paper documents.
10. Form 1042 and Form 1042-S are sorted, batched, numbered and follow basic pipeline processing.
 - a. During the Code and Edit function, the Form 1042-S returns are detached from the Form 1042 and processed separately.
 - b. Form 1042-S returns follow basic campus processing but the records do not post to Master File.
11. The tax data extracted from Form 1042-S processing is exchanged with foreign countries with which the United States has a tax treaty or exchange of information agreement. Form OECD (Organization for Economic Cooperation and Development) is used to exchange this information. See IRM 21.8.2.13.
12. To claim any over-withheld amount, the income recipient must file Form 1040NR, 1120-F, 1120-FSC, 990-T, 990-PF, or 8804, along with a copy of the Form 1042-S, even if a return is not otherwise required to be filed. This applies to all but a Qualified Intermediary (QI), Withholding Foreign Partnership (WP), Withholding Foreign Trust (WT) (and, for purposes of chapter 4 taxes only, a Participating Foreign Financial Institution (PFFI) or Model 1 Foreign Financial Institution (Model 1 FFI)) that is claiming a collective refund on behalf of its account holders, partners, owners, or beneficiaries pursuant to its respective agreement with the IRS. See IRM 21.8.2.12.10, *Qualified Intermediary Agreements (QI)*, and Rev. Proc. 2014-39 and Rev. Proc. 2014-47 for information on collective refund procedures.
13. See IRM 21.8.2.12.2.2, *Claims for Tax Withheld at Source*, for claims involving Form 1042-S tax withheld at source.

IRM 21.8.2.12.2.3 Updated the "Title" to include "FATCA".

FATCA - New Programming Beginning January 2015 Affecting Certain Forms 1120-F (TC 971 AC 746 -R Freeze)

IRM 21.8.2.12.3 Updated information on Form 1042 filing requirements.

1. The Form 1042 is filed by all persons having the control, receipt, custody, disposal, or payment of interest, dividends, rent, salaries, etc., to the extent

that any such items constitute gross income from sources within the United States, of nonresident alien individuals, or foreign corporations. Publication 515, *Withholding of Tax on Nonresident Aliens and Foreign Corporations*, can be used as a reference.

2. Form 1042 is due on or before March 15 of each year. Form 1042 and Form 1042-S must be filed whether or not any tax was withheld or was required to be withheld (i.e., income was exempt from withholding).
3. Taxpayers may apply for an extension to file by submitting a Form 7004, *Application for Automatic Extension of Time To File Certain Business Income Tax, Information, and Other Returns*.
 - a. Approval of the extension allows additional time to file the tax return, NOT additional time to pay the taxes.
 - b. Any undeposited taxes of \$200 or more, due by the Return Due Date (RDD), must still be deposited by that time. Undeposited amounts less than \$200 may be paid with the extension, but they still must be paid by the RDD.
4. Form 1042 returns are processed as BMF. Returns filed for Tax Year 1984 and prior were processed as NMF.

IRM 21.8.2.12.4 Corrected withholding agent information and added link to IRM 20.1.4-8.

1. All withholding agents are required to deposit the tax withheld. The amount of taxes withheld determines the frequency of deposits. See IRM 20.1.4.11, *Form 1042*, for additional information on deposit requirements and due dates for Form 1042.
2. Generally, withholding agents are required to deposit funds electronically. See Treas. Reg. §§ 1.6302-2(c), 31.6302-1(h)(3).
3. For deposit purposes, each month is divided into four periods ending on the 7th, 15th, 22nd and last day of the month. These are referred to as the "quarter-monthly" periods and are labeled 1 through 60 on the tax return.
4. When the total tax for the year is at least \$200, the taxpayer is required to list his/her tax liability in the Record of Federal Tax Liability (ROFTL) Section.
5. See IRM 20.1.4-8, *Form 1042 Deposit Requirements For All Periods*, to determine the frequency of deposits.
6. 90% Rule/Safe Haven: T.D. 9507 removed the 90% safe harbor rule from Treas. Reg. § 1.6302-2 beginning for tax periods 2011 and subsequent. For tax periods 2010 and prior, taxpayers are considered to have met the \$2,000 deposit requirement listed in (4) above if all the following statements are true:
 - a. At least 90% of the tax liability is deposited timely; and
 - b. Any underpayment is deposited with the first deposit that must be made after the 15th day of the following month, if the quarter-monthly period is in a month other than December. Any underpayment of \$200 or more that occurs during December must be deposited by January 31.

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IRM 21.8.2.12.6 Updated Form 1042 FTD penalties information and line number.

1. Penalty processing on Form 1042 (Chapter Three Withholding (CTW)) began in processing year 2003.
2. Taxpayers are now liable for this penalty and should have been making timely deposits beginning in 2002.

NOTE: A distributing corporation may include on line 64a of Form 1042 any tax liability resulting from adjustments of underwithheld tax on corporate distributions if it made a reasonable estimate of its accumulated earnings and profits under Regulations section 1.1441-3(c)(2)(ii)(A) or 1.1474-6(c)(2)(ii), **and** it paid over the underwithheld tax by March 15 of the subsequent year. Regulated investment companies (RICs), real estate investment trusts (REITS), or Personal Holding Companies (PHC) that declared dividends in October, November, or December under sections 852(b)(7), 857 (b)(9), or 563(b), and paid the dividends no later than March 15 of the subsequent year, should report the additional tax liability related to the dividends less any tax liability for such dividends declared in the prior year. These withholding agents should attach a statement to their Form 1042 to show their calculations

3. The penalty calculation rate is:
 - o 2% of the underpayment if 1 to 5 days late
 - o 5% of the underpayment if 6 to 15 days late
 - o 10% of the underpayment if 16 or more days late
 - o 10% for deposits made at an unauthorized financial institution, paid directly to the IRS, or paid with the tax return
 - o 10% for amounts subject to electronic deposit requirements but not deposited using EFTPS

NOTE: The penalty is increased to 15% if the balance of tax is not paid within 10 days after the IRS issues the first delinquency notice demanding payment. See *IRM 20.1.4.14.4, 15 Percent Rate Penalty Indicator Codes (PIC)*.

REMINDER: # #

4. Taxpayers can self compute the penalty (except the 15% penalty) and enter the amount on Form 1042, Line 71. The Form instructions provide the percentages to be used to calculate this penalty as listed above. Do not

abate, unless a request is subsequently made by the taxpayer. See the Caution below.

CAUTION: Verify that the penalty amount was not self assessed for an incorrect lower amount. Command Code FTDPN can be used to verify the correct penalty. If the penalty per FTDPN is higher and not within tolerance, assess the difference.

NOTE: This option is no longer available beginning with tax year 2011. If a withholding agent does include interest or penalties on its Form 1042, such amounts should only be reported on the bottom margin of the form and should not be included in the balance due on line 69.

5. These forms are worked by the International Department in the Cincinnati Accounts Management Center (CAMC) and the Ogden Accounts Management Center (OAMC).

NOTE: If a FTD Penalty on a 2007 or prior year return is received and there is an entry on line 66, see IRM 21.8.2.12.6.1, *Form 1042 FTD Penalty Resulting From Line 66 Entry*, in the archives for procedures.

6. Publication 515, *Withholding of Tax on Nonresident Aliens and Foreign Entities*, contains information that the taxpayer can use for additional reference.

IRM 21.8.2.12.7 Updated "Title" and exemptions from chapter 4 withholding information.

Exemptions from Chapter 3 or 4 Withholding

1. A withholding agent must withhold income tax at the statutory rate or lower treaty rate, unless one of the following conditions are met:
 - o The income is exempt by treaty.
 - o The income is exempt by an IRC section.
 - o The income is considered foreign source.
 - o The income is considered "effectively connected with a U.S. trade or business."
 - o The foreign individual or entity is considered a resident of the United States for income tax purposes.
2. All exempt or reduced withholding must be based on the applicable alien withholding certificate (W-8BEN-E, W-8ECI, W-8EXP, W-8IMY, or W-8CE) or a statement signed under the penalties of perjury attesting to the recipient's country of residence for income tax purposes. See IRM 21.8.2.18, *Withholding Certificates*.
3. The W-8 series documents were modified in 2014 as part of the implementation of the Foreign Account Tax Compliance Act (FATCA). See

IRM 21.8.2.18.1, Form W-8, *Certificate of Foreign Status*, for a chart that shows the forms that became obsolete and their replacements.

IRM 21.8.2.12.8 Updated Form 1042 amended return information.

1. Form 1042, *Annual Withholding Tax Return for U.S. Source Income of Foreign Persons*, is an income tax return used to report amounts subject to withholding under chapter 3 (sections 1441-1443) and amounts withheld under chapter 4 that are withholdable payments (sections 1471-1474).
 - a. The withheld amounts are paid to IRS and do not belong to the withholding agent if they consist entirely of funds withheld from the nonresident alien or entity.
 - b. For deposit rules, see IRM 21.8.2.12.4 and for deposit due dates, see Exhibit 20.1.4-8, *Form 1042 Deposit Requirements For All Periods*, in IRM 20.1.4, *Penalty Handbook - Failure to Deposit Penalty*.
 - c. Tax decreases are examination criteria. See IRM 21.8.2.1.13, *Examination Criteria*.
2. Most requests for adjustments on Form 1042 occur when payers withhold tax at the wrong rate, or from recipients exempt from taxation, either under treaty provisions or for reasons described in IRC § 1441 and IRC §1442. In most cases it is discovered after the payer has sent a Form 1042-S showing the withholding to the payee. The payee may not have provided the withholding agent with the necessary documentation to permit rate reductions or exemption.
3. The same criteria are used to decide the validity of issues raised by the taxpayer and must be submitted as an amended Form 1042 (the "Amended Return" at the top of the Form 1042 is checked) for adjustment or abatement. Form 843, Claims, and correspondence are not allowed.
4. When claims are received without enough information to determine if the special procedural criteria listed below have been met, correspond with the taxpayer. See IRM 21.8.2.12.9, *Processing Claim Adjustments for Form 1042*.
5. Refunds by the IRS to the withholding agent or payer can only be done if the conditions set forth in IRC § 1464, IRC § 1474, and IRC § 6414 are met. See IRM 21.8.2.12.10.1, for situations in which certain withholding agents can claim collective refunds on behalf of their account holders, partners, owners, or beneficiaries. The following is a list of situations where refunds of amounts claimed are acceptable. See IRM 21.8.2.1.13, *Examination Criteria*, for types of Form 1042 claims and issues to forward to Exam for classification.
 - a. Error was made only in the amounts deposited:

EXAMPLE: The withholding agent only withheld \$300 tax from various payees as documented on its Form 1042-S, but mistakenly deposited \$350. The \$50 error can be refunded to the withholding agent, since the withholding agent is the actual owner of the erroneous amount.

b. The amount was actually withheld, but discovered before the original Forms 1042-S are filed.

EXAMPLE: In the simplest case, the withholding agent withholds and the error is discovered prior to the last deposit. The withholding agent may treat the amount as erroneously withheld, repay the beneficial owner, and reduce the tax liability on the Form 1042 for the period in which the repayment was made (before the earlier of the date on which the associated Form 1042-S is filed or the due date for such form). The withholding agent may claim a credit (not a refund) to carry forward to the subsequent year and then reimburse itself by reducing the amount of a deposit prior to the end of the subsequent year.

6. If a complete package is received, but the error was discovered after the close of the calendar year, refer to Examination. They usually recommend disallowance of the claim and/or amended Form 1042 when the:
 - o Last deposit has been made for the tax year
 - o Form 1042 has been filed, and
 - o 1042-S forms have been issued to the recipient(s)
7. Overpayments discovered after the return has been filed (March 15) can be claimed only by the recipient on an Income Tax Return (Form 1040NR or 1120-F) with the credit substantiated by attaching a Form 1042-S.
8. Follow the procedures in the following table for processing amended 1042-S forms (submitted with or without Form 1042):

| IF | THEN |
|---|--|
| Making adjustments for prior years to the amount of tax reported, or to amounts that were actually withheld resulting in a tax decrease | Reject and advise, using a Letter 916C, that an income tax return must be filed to claim the overwithheld amount. Input TC 290.00, Blocking Series 18 or 15 for cases worked in CIS. |
| The change is for the correction of a math error only in the liability reported on the original return, or to correct errors in ownership | Allow (Form 1042 must be attached). Send original/amended 1042-S forms to Ogden Submission Processing Campus at: Mailing Address , Internal Revenue Service, Ogden Submission Processing Campus P.O. Box 409101 Ogden, UT 84409 or Physical Address , Internal Revenue Service Ogden Submission Processing Campus |

| | |
|--|--|
| | 1973 N. Rulon White Blvd. Ogden, UT 84404 |
| Change accepted by Examination | Adjust the Form 1042. Input the adjustment (TC 29X) with Reference Code 011. |
| An amended Form 1042 return is received showing an underpayment or under withholding resulting in a tax increase | <p>The withholding agent is liable for the entire tax and interest from the due date. Assess the additional tax. Adjust penalty if necessary. See IRM 20.1.4.21.3, <i>Amended or Supplemental Return (Tax Decrease or Non-interest-free Tax Increase)</i>, for additional information.</p> <p>CAUTION: If an additional payment is not on the account, research IDRS for corresponding payment that may have posted to the current tax period, a different tax liability or for a TC 650 for an amount greater than zero, which may indicate a misapplied payment. If an additional payment is located, transfer using CC ADD/ADC 24 or ADD/ADC 34.</p> |

REMINDER: The amount of tax withheld on income for foreign persons under sections 1441 through 1446, are chapter 3 taxes. The amounts of tax withheld on withholdable payments under sections 1471 and 1472 are chapter 4 taxes. Accordingly, to the extent that an overpayment arises from those taxes being deducted, withheld and reported on Form 1042, the 180-day period applies. See IRM 21.8.2.9.6.1, *180-day interest-free Period for Chapter 3 Withholding*.

NOTE: With the large amounts of gross income now being reported, there may not be enough space to enter the full amount for Reference Code 011 on REQ54. Enter as much as the system allows and initiate additional TC 290.00, Hold Code 3, Reference Code 011 REQ54 adjustments until the total of these adjustments reflect the full amount needed.

9. Amended/corrected 1042-S forms are sometimes submitted with the amended Form 1042. In this case, the corrected 1042-S form is regarded as a supporting schedule for adjustments. If the corrected 1042-S form is with the amended Form 1042, attach copies of the 1042-S forms to the adjustment document. Send the original corrected/amended 1042-S forms to:

Mailing Address, Internal Revenue Service
Ogden Submission Processing Campus
P.O. Box 409101
Ogden, UT 84409

or **Physical Address**, Internal Revenue Service
Ogden Submission Processing Campus
1973 N. Rulon White Blvd.
Ogden, UT 84404

10. TRNS 193 notices are generated for all duplicate (multiple) return conditions processed through pipeline.

EXCEPTION: Returns that by-pass Submission Processing are not numbered and do not create TRNS 193 notices. Therefore, follow the procedures in IRM 21.7.9.3.1, *Amended/Corrected/Adjusted Returns that By-Pass Submission Processing*.

11. Follow general guidelines in IRM 21 and specific adjustment procedures in IRM 21.7.9, *BMF Duplicate Filing Conditions*, to resolve the "-A" freeze unless the entity is a Qualified Intermediary (QI), in which case apply those specific procedures contained in Qualified Intermediary Agreements (QI). See IRM 21.8.2.12.10.

IRM 21.8.2.12.9 Updated Form 1042 processing claim adjustments information and line numbers.

1. An adjustment to the Form 1042 account is made using:
 - o MFT 12
 - o Blocking Series 00, if made with the original
 - o Blocking Series 15, if made without the original
 - o Blocking Series 15 or 18 if working in CIS
2. An adjustment to the gross income paid (item reference number 011) can be done at any time.
3. However, no tax liability or withheld amount decrease adjustment can be made to the withholding tax after the due date of the Form 1042, unless special criteria exists. See IRM 21.8.2.12.8, *Amended Returns - Form 1042*.

NOTE: Use IDRS to ensure each individual recipient's account **does not** contain a TC 766 credit for the same amount of the withholding agents amended return decrease.

4. When a claim for tax decrease is received, verify that the withholding agent has submitted substantiation.
 - a. If the withholding agent has submitted substantiation, request the original return, secure research on the withholding agent and each Form 1042-S recipient, and forward the case to Examination.
 - b. If the withholding agent did not provide substantiation with the claim for tax decrease, input a TC 290 .00, Blocking Series 18 or 15 for cases worked in CIS, and send Letter 916C rejecting the claim stating that: "We are unable to consider your claim because you failed to

provide the specific reason for the claim for decrease as required by Treas. Reg. 301.6402." Also include the following open paragraph:

| Letter Paragraph |
|--|
| Please state your reasons for making changes to the amounts reported as being withheld on the original Form 1042-S(s). Were taxes actually withheld from payments and all withheld taxes deposited? Were original Form 1042-S(s) issued? Was the change in withholding discovered after the close of the calendar year? Please supply copies of the corrected and voided Form 1042-S(s) affected by the amendment. |

5. When a withholding agent replies to the Letter 916C by submitting substantiation for the Form 1042 tax decrease:
 1. Request the original return and the claim we were unable to consider (Blocking Series 18 or 15 for cases worked in CIS).
 2. Secure research on the withholding agent and each Form 1042-S recipient to see if they filed for a refund of the same withholding, and
 3. Forward the case to Examination with all research. See IRM 21.8.2.1.13, *Examination Criteria*.
6. IRC Section 5000C now imposes a 2% excise tax payable by federal agencies on government foreign procurement payments. The requirement to report and pay this tax began in 2011.
7. This excise tax is reportable on Line 64d (Line 71 for TY 2011-2013) of Form 1042 and is included in the ROFTL. Only entities with an Employment Code (EC) "F" present on CC ENMOD are required to pay this excise tax. See IRM 3.21.110.1, *Overview - Chapter Three and Chapter Four Withholding*, IRM 3.22.110.18.17, *Field 0764D - Form 1042 Excise Tax Amount*, and IRM 3.13.222.80, *Unpostable Code (UPC) 331 Reason Code (RC) 7*, for additional information.
8. Masterfile has been programmed to identify line 64d entries (Line 71 for TY 2011-2013) as reference item 198.
9. If an amended return is received correcting line 64d (Line 71 for TY 2011-2013) of Form 1042, follow all general adjustment guidelines. Use REQ 54 to input TC 290 with reference code 198 to make the correction. If the correction results in a decrease, follow all CAT-A guidelines, use TC 291 and reference code 198 with a (-) minus to input the decrease.

EXCEPTION: If the EC is not "F", then no consider the amended return. Send Letter 916C with the following fill-in paragraph: We are unable to process your amended return for the tax period(s) shown above. Our records indicate you are not required to report the two-percent excise tax on federal procurement payments to a foreign person or foreign entity.

IRM 21.8.2.12.10 Updated QI information and line number.

1. Under Treas. Reg. § 1.1441-1(e)(5), certain entities can enter into agreements with the IRS to become Qualified Intermediaries (QIs). Qualified Intermediaries can be:
 - o Foreign financial institutions (e.g., banks, brokerage houses), other than a U.S. branch of such institution
 - o Foreign branches of U.S. financial institutions or U.S. clearing organizations
 - o Foreign clearing organizations
 - o Non-financial foreign entities acting as intermediaries

NOTE: For chapter 4 purposes, a QI must be a participating foreign financial institution (PFFI), a registered deemed-compliant FFI, and FFI treated as a deemed-compliant FFI under an applicable Model 1 IGA, or, for a transition period, a limited FFI. In certain instances, a certified-deemed compliant FFI, a central bank of issue, or a foreign branch of a financial institution may also be a QI. See Rev. Proc. 2014-39 for further information.

2. A foreign partnership or trust cannot become a QI. However, a foreign partnership, or a foreign simple or grantor trust, can enter into a Withholding Foreign Partnership (WP) or Withholding Foreign Trust (WT) agreement with the IRS under Treas. Reg. § 1.1441-5(c)(2) and (e)(5)(V). See Rev. Proc. 2014-47 for agreement and application procedures. A partnership or trust that has entered into a WP or WT agreement assumes chapter 3 and 4 with respect to its partners, owners, or beneficiaries (as applicable).
3. The benefits of becoming a Qualified Intermediary include:
 - o Maintaining confidentiality of non U.S. customers by providing withholding rate information to U.S. custodians on a pooled basis
 - o Simplified information reporting procedures
 - o Use of collective refund procedures so customers do not have to file refund claims individually
4. Refer taxpayers, who question how or where to apply for QI status, to Rev. Proc. 2014-39 which give guidance for entering into a QI Agreement.
5. There is a web site established for Qualified Intermediaries on <http://www.irs.gov>. Additional information can also be found in Publication 515.

CAUTION: Taxpayers may incorrectly use a Qualified Intermediary (QI) Number to file returns or make deposits or payments. The EIN's for Qualified Intermediaries are in the range from **# #**. Tax examiners need to be aware of this when resolving payment tracers and duplicate filing conditions. Contact with the taxpayer may be necessary to determine the correct EINs that should have been used. Do not reinput a return under a different EIN when the QI number is involved. Have the taxpayer submit a signed return using the correct EIN and have it processed. Adjust the other account accordingly, after applying guidelines for examination criteria.

NOTE: When contacting taxpayers, follow procedures in IRM 21.1.3.2.3, *Required Taxpayer Authentication*, for purposes of identification and to

prevent unauthorized disclosures of tax information. Also, use caution when leaving information on answering machines or voice mails. (See IRM 11.3.2.6.1, *Leaving Information on Answering Machines/Voice Mail.*)

6. If taxpayers question the time frame for approval of QI status, advise them that a QI EIN in the range mentioned above will be issued upon receipt of the SS-4 application. Acceptance of a QI application currently takes approximately 30 days for approval and will be issued from the New York office. If there is a question on the QI status, ENMOD can be researched to see if the application was rejected. Entity will be notified to update ENMOD if the number is being revoked. See IRM 21.7.13, *Assigning Employer Identification Numbers.*
7. Ann. 2000-48 and IRB 2006-35 Notice 2006-35 provide additional guidance for financial institutions that are considering the QI regime.
8. Withholding Foreign Trusts and Foreign Partnerships can find procedures in Rev. Proc. 2014-47 (or Rev. Proc. 2003-64 for agreements with effective dates prior to June 30, 2014).
9. A QI agreement generally is based in part on a Treasury Department Certification that the country has effective rules and/or procedures for providing tax information to the U.S. Treasury and the IRS regarding know-your-customer (KYC) rules as a vital component of adequate self-regulation. The IRS generally does not extend the QI system to any country that does not have acceptable KYC rules.
10. The following link is to a list of countries that have submitted approved KYC rules:[- 12. If an unnumbered Form 1042 is received without a QI EIN, but the QI box is checked, send it back to the taxpayer with an explanation of the requirements.](http://www.irs.gov/Businesses/International-Businesses>List-of-Approved-KYC-Rules. This website is updated regularly.11. If the EIN is in the range noted in paragraph (5) above and the INTERMEDIARY IND on the BRTVU is 1, the entity is a Qualified Intermediary. If the indicator is)

IRM 21.8.2.12.10.1 Updated refund adjustments information and line numbers.

1. Qualified Intermediaries, Withholding Foreign Partnerships, Withholding Foreign Trusts, and, for purposes of chapter 4 taxes only, a Participating Foreign Financial Institution (PFFI) or Model 1 Foreign Financial Institution (Model 1 FFI) can request collective refunds on behalf of their account holders, partners, owners, or beneficiaries (as applicable) for amounts withheld under chapters 3 and 4. Specific procedures are contained in Rev. Procs. 2014-39 and 2014-47 and in Regulations section 1.1471-4(h).

2. This credit withheld is claimed on Form 1042 and shows up as an overpayment on lines 70a and 70b.
3. The requester must have an EIN in the range from **##**. This number identifies a QI, WP, or WT. Alternatively, a PFFI or Reporting Model 1 FFI can be identified by checking their Chapter 4 Status Code reported on Form 1042 (code should be between 08 and 10).
4. A filer claiming a line 63b credit on an original return can have it refunded (without pre-examination approval) only if they are one of the entities listed in (1) above. Liability decreases on amended returns require examination approval. See IRM 21.8.2.1.13, *Examination Criteria*.
5. Any withholding agent that has been withheld on by an upstream withholding agent can claim credit for this upstream withholding at source by stating it on line 67 of its own Form 1042 and attaching the Forms 1042-S it has received. There is a possibility that a non-QI, non -WP and non-WT can list a credit on line 67. If this occurs on an amended Form 1042, it is possible that during initial processing, the line 67 entry may not have been accepted. A math error notice generates, and the tax due is recomputed.
6. If an amended return is received after the disallowance, or if it was missed in initial processing, the non-QI's (or non-WP or non-WT) line 67 entry can be allowed up to the amount of the tax (TC 150 or Line 64e). The filing withholding agent must provide documentation (Forms 1042-S) that the tax was withheld by a withholding agent upstream from this withholding agent to substantiate the credit.

NOTE: If there are other credits (e.g., electronic deposits, or subsequent payments), these amounts may be requested and allowed for refund, but only after Examination approval.

IRM 21.8.2.12.10.1.1 Updated adjustment information and line numbers.

1. This subsection provides background information; it does not contain adjustment procedures. Like other non U. S. payees, before the first Form 1042-S is issued, when the withholding agent has over-withheld under chapter 3 or 4, a Qualified Intermediary (QI) may request that the withholding agent make an adjustment for amounts paid to the QI by applying either the reimbursement procedure or the setoff procedure.

NOTE: Only a QI, WP, or WT (and PFFIs and Reporting Model 1 FFIs for amounts attributable to chapter 4 taxes) can request refund of all or part of line 63b amounts over-withheld. See IRM 21.8.2.12.10.1.4, *Credit or Refund Procedures for Over-Withholding by a Qualified Intermediary on an Amended Return*. Other entities cannot get a refund from a line 63b entry.

- o The reimbursement procedure requested by the QI must occur prior to the due date (without regard to extensions) for the withholding agent to file Form 1042 and Form 1042-S or the date the Form 1042-S is

actually filed with the IRS. The withholding agent repays the QI any overwithheld amounts and reimburses itself by reducing any deposits made before the end of the subsequent tax year. If the repayment to the QI occurs in the subsequent tax year (prior to the earlier of the filing of the associated Form 1042-S or the due date for such form), the withholding agent indicates the amount of the repayment in Box 11 of Form 1042-S. The withholding agent can claim a credit for the amount it has repaid the QI and can use it to offset its liability in the subsequent year.

NOTE: This type of adjustment appears on the IRS records on the Form 1042 filed by the upstream withholding agent and the Form 1042-S that the withholding agent provided to the QI as payee. Only the proper amount of upstream withholding will be reported by the QI on Form 1042 when the QI's Form 1042 is filed.

- The setoff procedure allows the withholding agent to repay the QI by permitted under-withholding in the subsequent year. That is, the withholding agent applies the amount over-withheld in Year 1 against any other amount that would be subject to chapter 3 or 4 withholding on income paid by the withholding agent to the QI in Year 2. The entire adjustment must be completed before the earlier of the due date for the withholding agent to file Form 1042-S for the calendar year (without regard to extensions) or the date that the Form 1042-S is actually filed with the IRS.

IRM 21.8.2.12.10.1.2 Updated adjustment information.

1. This subsection provides background information; it does not contain adjustment procedures. A Qualified Intermediary (QI) may make an adjustment for amounts paid to its account holders that it has over-withheld under chapter 3 or 4 withholding by applying either the reimbursement or setoff procedures within the time period prescribed for those procedures.

NOTE: These are not the same as adjustments for NRA over-withholding by a non-QI withholding agent.

2. The reimbursement procedure requires that the QI may repay its account holders an amount over-withheld. The QI then reimburses itself by reducing the amount of a subsequent tax deposit. An amount over-withheld may be applied to reduce a deposit in the following calendar year only if:
 - The QI states on a Form 1042-S the amount of tax withheld and the amount of any actual repayment. The Form 1042-S is issued to a reporting pool or, if applicable, to the account holder of the income. The document must be filed by March 15, **and**

- The QI states on a Form 1042 that the filing of the Form 1042 constitutes a claim for credit (**not refund**) in accordance with the Treas. Reg. § 1.6414-1. The document must be filed by March 15.

3. The setoff procedure allows the QI repay its account holders by applying the amount over-withheld in Year 1 against any amount which otherwise would be subject to chapter 3 or 4 withholding from a payment made by a QI to the account holder in Year 2 before the earlier of March 15 of the calendar year or the date that the Form 1042-S is actually filed with the IRS. The QI completes Forms 1042-S to the reporting pools showing the corrected lower liability (computed from gross income and correct tax rate) and the correct withholding amount in Year 1. The Forms 1042-S to the reporting pools for Year 2 show the correct liability and the correct withholding amount in each pool. The QI's Form 1042 in Year 1 shows a credit due to overdepositing in Year 1 that it can use in Year 2 to offset liability in Year 2 due to the permitted underdepositing.

IRM 21.8.2.12.10.1.4 Updated credit or refund information.

1. Over-withholding by a QI on amounts subject to NRA withholding, paid to a Qualified Intermediary's account holders during a calendar year that is discovered after March 15 (and the amount has not been recovered under the reimbursement or setoff procedures explained above), can be requested by a QI on its Form 1042 if **ALL** of the following conditions are met:
 - The QI must **not** have issued 1042-S forms to the account holders that received the payment that was subject to over-withholding.
 - The QI must submit together with its amended return, on which it claims a credit or refund, a statement of the reason for the over-withholding.
 - The QI must submit together with its amended return, on which it claims a credit or refund, a statement that it has repaid or will repay the amount of over-withholding to the appropriate account holders prior to filing the claim for credit or refund.
 - The QI must retain a record showing that it repaid the account holders the amount of the over-withholding.
2. Correspond if any of the above information cannot be verified and/or the statements are not provided.
3. If all of the above information is provided, send the package to Examination Classification. See IRM 21.8.2.1.13, *Examination Criteria*.
4. If Examination Classification accepts the issue, allow the adjustment on ADJ54 with a TC 291 and reference code 011.

REMINDER: The amount of tax withheld on income for foreign persons under sections 1441 through 1446 are chapter 3 taxes. Accordingly, to the extent that an overpayment arises from those taxes being deducted, withheld and reported on Form 1042, the 180-day period applies. See IRM 21.8.2.9.6.1, *180-day interest-free Period for Chapter 3 Withholding*.

IRM 21.8.2.12.10.2 Added chapter 4.

1. This subsection provides background information; it does not contain adjustment procedures. If a Qualified Intermediary (QI) knows that an amount should have been withheld under chapter 3 or 4 withholding from a previous payment to an account holder but was not withheld, the QI may:
 - o Either withhold from future payments made to the same account holder, or
 - o Satisfy the tax from property that it holds in custody for the account holder or property over which it has control. For example, stocks, bonds etc.
2. The additional withholding or satisfaction of the tax owed may only be made before the due date of the Form 1042 (not including extensions) for the calendar year in which the under-withholding occurred.
3. QI's responsibilities are met if it informs a withholding agent, from which it received the payment, of the under-withholding and the withholding agent satisfies the under-withholding.

IRM 21.8.2.12.10.2.2 Updated line numbers.

1. QI filers who report a line 67 entry only, must show the liability on the ROFTL as occurring on the last day of the year. This should suppress the FTD penalty. If not, and adjusting line 67 with a TC 766, input a TC 181 to abate the penalty. Use Penalty Reason Code 045.

IRM 21.8.2.12.10.3 Updated "Title", amended Form 1042 information and line numbers.

Amended Form 1042 Returns with Line 67 Changes

1. The line 67 (credit for amounts withheld by other withholding agents) entry from Form 1042 is reflected on IDRS as TC 766 with a CRN 330 (Form 1042-S) and/or CRN 333 (Amended Form 1042-S) and is for amounts withheld by other withholding agents that pertain to the total net liability reported on Form 1042, lines 64e and 64c (total net tax liability).
2. An Intermediary is a person who acts as a custodian, broker, nominee, or otherwise as an agent for another person, regardless of whether that other person is the beneficial owner of the amount paid, a flow-through entity, or another intermediary.
 - o A Qualified Intermediary (QI) is an intermediary that entered into a withholding agreement with the IRS. Withholding Foreign Partnerships and Withholding Foreign Trusts may also enter into

withholding agreements with the IRS. These entities are recognized by their EIN's. All are assigned EINs within the range:

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- A Non-Qualified Intermediary (NQI) is any intermediary that is not a U.S. person and that is not a QI. Most NQIs do not need to file Form 1042 because they pass all required documentation to an upstream withholding agent so that the withholding agent can withhold from and report to the NQI's account holders.
- 3. Adjustments to line 67 entries are permitted by both QIs and NQIs. However, a refund of line 67 credits can only be made to a QI.
- 4. Certain documentation/statements must be provided before allowing an amendment to a line 67 credit that was claimed on an original return.
- 5. Most requests for adjustments occur when payers withhold tax at rates that are higher than required when the beneficial owners are fully documented. That is, the recipients are either exempt from taxation, or benefit from treaty provisions or for other reasons described in IRC § 1441 or IRC § 1442.
- 6. An amended return can be filed to increase the **credit** originally claimed on line 67 without increasing the tax amount. Follow procedures in Paragraph (7) when a refund is requested by a QI.
- 7. The following substantiation must be provided when an adjustment is requested for line 67 after the due date of the return:
 - A signed amended Form 1042
 - The reason for requesting the adjustment, and
 - A copy of the original, voided original and corrected Forms 1042-S. The amounts in Box 8 should total to the line 67 credit. Even if provided, allow only credits that can be verified as having been received by the IRS using one of the following:
CC IRPTR with a Definer "L" and Document Code "02", which displays Form 1042-S credits;
CC IRPTR with a Definer "O" and Document Code "02", which displays Form 1042-S credits;
CC IRPTR with a Definer "I" and Document Code "02", which displays all Forms 1042-S issued by a withholding agent.

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- 8. Correspond or call the taxpayer to request the proper documentation and/or substantiation of the credit if the full amount claimed cannot be verified on CC IRPTR.
- 9. If a **decrease in tax** is requested, and the proper documentation has been submitted, send to Examination Classification prior to allowing. See IRM 21.8.2.1.13, *Examination Criteria*.

10. If the issue is accepted by Classification, make the adjustment (if tax is affected, use TC 29X). If the line 67 credit is affected, use TC 766 CRN 330/333 to allow or increase credit. TC 767 CRN 330/333 is used to reverse all or part of a previous credit.
11. The amount of tax withheld on income for foreign persons under sections 1441 through 1446 are Chapter 3 taxes. The amount of tax withheld on withholdable payments to foreign entities under sections 1471 and 1472 are chapter 4 taxes. Accordingly, to the extent that an overpayment arises from these taxes being deducted, withheld and reported on Form 1042, the 180-day interest-free period applies. See IRM 21.8.2.9.6.1, *180-day interest-free Period for Chapter 3 Withholding*.

IRM 21.8.2.12.10.3.1 Deleted subsection because the information is obsolete.

IRM 21.8.2.14.1 Updated line number.

1. The total withholding tax liability of the partnership for its tax year is reported on Form 8804, *Annual Return for Partnership Withholding Tax*.
2. Form 8805, Foreign Partner's Information Statement of § 1446 Withholding Tax, is used to show the amount of effectively connected taxable income and the withholding tax attributable to each foreign partner for the partnership's tax year. If the foreign partner is a foreign trust or estate, the foreign trust or estate must provide a copy of the Form 8805 furnished by the partnership to each of its beneficiaries. In addition, the foreign trust or estate must complete Schedule T for each of its beneficiaries and must provide that Schedule T information to each beneficiary. The partnership may need to provide additional information on the Form 1065 K-1 regarding the components making up the amount of effectively connected taxable income reported to the partner in order for the partner to prepare its tax return.
 - o A separate Form 8805 must be filed for each foreign partner.
 - o A copy of each Form 8805 must be attached to the Form 8804 when filed.
3. The foreign partner must attach Form 8805 to its return in order to claim a credit on Form 1040NR, Form 1120-F, or Form 8804.
4. Any U.S. person erroneously made subject to the withholding tax would also receive Form 8805 from a partnership and must attach the form to its income tax return to obtain credit.
5. A foreign partnership that is a partner in another partnership that has withheld and paid over amounts under IRC § 1446 must treat the tax withheld by the lower-tier partnership as though it were an amount paid by the upper-tier partnership for purposes of §1446. Accordingly, the upper-tier partnership must complete and file Form 8804 and Form 8805 as appropriate to satisfy its

§1446 withholding tax obligation and report the amount of tax withheld on their behalf to its partners.

6. Form 8813, Partnership Withholding Tax Payment Voucher (§1446), is used to transmit installment payments to the IRS.
7. If a discrepancy exists between the amounts shown on the Form 8804 and the posted IDRS data, resolve the matter at the Campus level. Where appropriate, **#**
8. The due date for filing Form 8804 and for paying any amount due with the return is generally the 15th day of the 4th month after the close of the partnership's tax year. However, for partnerships who keep their books and records outside the United States and Puerto Rico, the due date is the 15th day of the 6th month after the close of the Partnership's tax year. Taxpayers may request an extension of time to file Form 8804 by filing Form 7004. The extension is generally for five months. However, partnerships who keep their books and records outside the United States and Puerto Rico may only receive a 4 month extension beyond their initial due date. Filing Form 7004 does not extend the time to pay.

NOTE: The Form 7004 extension of time to file was reduced from 6 months to 5 months for Form 8804 that has a tax year ending on or after September 30, 2008.

9. Generally effectively connected taxable income (ECTI) allocated to a foreign partner is subject to withholding at 35%.
 - o However, a partnership is permitted to consider the highest rate of tax applicable to a particular type of income or gain allocable to a partner (e.g., for these types of income allocable to individual partners: 15% for long-term capital gains, 25% for unrecaptured section 1250 gain, and 28% for collectibles gain under section 1(h)), to the extent of a partners allocable share of such income or gain.
 - o If the application of the preferential rate depends upon the corporate or non-corporate status of the person reporting the income or gain, a partnership may consider the highest rate of tax applicable to a particular type of income or gain only if the necessary documentation has been provided to the partnership under §1.1446-1 to establish the corporate or non-corporate status of the partner required to pay tax on the income or gain.
 - o Refer to IRM 21.8.2.12.7 for the documentation certificates. See e.g., §1.1446-1(c)(2) (for documentation certificates), §1.1446-1(c)(3) (presumption of foreign status in absence of documentation) and §1.1446-5(c)(2) (requirement to pay 1446 tax at highest of rates in section 1446(b) where a lower-tier partnership cannot reliably associate income with a partner of the upper-tier partnership).
10. As indicated in the Form 8804 instructions, if a foreign partner has allocated to it an amount included on line 4d that includes both a net capital gain and qualified timber gain (QTG), an alternative maximum 15% capital gain may apply to the qualified timber gain. For this purpose, a qualified timber gain means the net gain described in IRC § 631 (a) and (b), determined by taking

into account only trees held more than 15 years. Only qualified timber gains for the period that begins after May 22, 2008 and before May 23, 2009, are eligible for the alternative tax. The instructions also require that the partnership enter "QTG" on the dotted line to the left of the line 5f entry.

IRM 21.8.2.15 Updated stop and team number.

1. A foreign estate or trust must use a Form 1040-NR, *U.S. Nonresident Alien Income Tax Return*, to report income tax.
2. Correspondence or amended returns submitted by a fiduciary of a foreign estate or trust are worked by the Cincinnati Accounts Management Center (CAMC) NMF team. Forward any correspondence or amended returns to Stop 6111G ATTN: Team 103. For additional information on processing Form 1040NR Fiduciary returns, see IRM 21.7.12.5, *Form 1040NR (Fiduciary), U.S. Nonresident Alien Income Tax Return*.

IRM 21.8.2.17.2.1 Updated streamlined information.

1. Filers from within the United States will submit a package to a specific mailbox in Submission Processing in Austin. The filing package will contain complete and accurate amended returns for each of the most recent 3 years for which the U.S. tax return due date (or properly applied for extended due date) has passed together with any required information returns (e.g., Forms 3520, 3520-A, 5471, 5472, 8938, 926, and 8621) even if these information returns would normally not be submitted had the taxpayer filed a complete and accurate original return. Taxpayers may NOT file delinquent original returns under these procedures.

NOTE: Filers are instructed to write, "Streamlined Domestic Offshore" in red at the top of the first page of each amended return.

2. In addition to the amended returns, domestic streamline filers must also submit a statement on the *Certification by U.S. Person Residing in the United States for Streamlined Domestic Offshore Procedures* attesting:
 - o The taxpayer or taxpayers are eligible for the SDO procedures
 - o The tax years and amounts owed for each year including interest (payment must be made).
 - o All required FBARs have now been filed
 - o The failure to report all income, pay all tax, and submit all required information returns, including FBARs, resulted from non-willful conduct

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- The miscellaneous offshore penalty amount is accurate.

3. LB&I will review the submissions for statute considerations. LB&I will complete the "AM Streamline Coversheet" and attach it to the package notating their statute recommendations regarding open statutes and statute extensions.
4. Amended returns will be scanned into CIS for Accounts Management processing and assigned to a designated IDRS number for subsequent assignment to CSR's.
5. One CSR must work all related cases.
6. Accounts Management will be responsible for reviewing the packages to ensure the necessary certifications are attached and complete. If they are incomplete AM will correspond with the taxpayer to perfect the submissions.
7. Use the table below to determine if the required certification is complete:

NOTE: If the taxpayer completes the certification for only one or two tax years, and submits the same number of amended returns, do not question whether additional years should have been submitted. As long as the tax years listed on the certification are filed, accept that the number is correct.

| If | Then |
|--|--|
| <p>The certification is attached, and:</p> <ol style="list-style-type: none">1. The amounts owed for each tax year, including interest, are calculated, and2. The amounts owed, including interest have been paid, and3. The amounts paid equal the taxpayer's calculations, and4. The taxpayer has completed the section stating the specific reasons for failure to report all income, pay all tax, and submit all required information returns, | <p>The certification is complete. Follow the instructions in Paragraph 8 below.</p> |

| | |
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| <p style="text-align: center;">#</p> <p style="text-align: center;"># , and</p> <p style="text-align: center;">5. The miscellaneous offshore penalty is calculated and paid</p> <p style="text-align: center;">#</p> <p style="text-align: center;">#</p> <p style="text-align: center;">6. The taxpayer(s) have signed the certification under penalties of perjury</p> | |
| <p>There is no certification attached or, the certification is attached but:</p> <ol style="list-style-type: none"> 1. The amounts owed for each tax year, including interest, are not calculated, or 2. The amounts owed, including interest, are not paid or, 3. The amounts paid do not equal the taxpayers calculations or, 4. The taxpayer does not complete the section stating the specific reasons for failure to report all income, pay all tax, and submit all required information returns, including FBAR's, or 5. The taxpayer does not calculate and or pay the miscellaneous offshore penalty, or 6. The taxpayer does not sign the certification | <p>Call or correspond with the taxpayer. If corresponding, issue 178C , using the appropriate paragraph(s) to address the specific items missing from the certification. Suspend the case for 40 days.</p> <ul style="list-style-type: none"> o If the taxpayer responds with the necessary information, securely e-mail the TIN to a designated mailbox: "*LB&I OVDP Compliance" with an explanation the case is being sent post assessment and is a Certification Reply. Enter CIS case notes saying referred to LB&I as a "Certification Reply". Then follow paragraph 8 below. o If the taxpayer does not respond, treat the case like a normal amended return. Do not restrict the failure to file or failure to pay penalties and do not input TC 971 with Action Code(AC) 178. <p>NOTE: The 178C letter includes language advising the taxpayer if they do not</p> |

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|----------------------------|--|
| under penalties of perjury | <p>respond, the case(s) will be closed using normal procedures, so no closing letter is necessary for "No Reply" cases.</p> <ul style="list-style-type: none"> ○ After making the assessment on no response cases, securely e-mail the TIN to a designated mailbox: "*LB&I OVDP Compliance" with an explanation the case is being sent post assessment and is a "No Reply." Enter CIS notes indicating the case was referred to *LB&I OVDP Compliance "No Reply". |
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8. Accounts Management will perform the following actions prior to adjusting accounts under the SDO:

- Review the account for a -Z freeze. If there is a -Z freeze on the account, contact CI to determine whether an amended return filed using the Streamlined Foreign Domestic Compliance Procedures can be processed. Follow CI's direction. See -Z freeze instructions at IRM 21.5.6.4.52 *-Z Freeze*.
- Review each tax year for statute consideration. Refer to Statutes for clearance or assessment when necessary. See IRM 25.6 *Statute of Limitations*.
- Review Command Code AMDIS for examination involvement. Follow the table below if any of the affected accounts are found on Command Code AMDIS.

| If | Then |
|---|--|
| All affected tax years are in AMDIS Status less than 12 | <p>Process all related amended returns as streamline. Follow paragraph 9 below</p> <p>NOTE: Forward the case to Exam, based on the AIMS data (after processing as Streamlined) when AMDIS status is 09 or greater and less than 90.</p> |
| Any affected tax year is in AMDIS status 12 or greater | <ul style="list-style-type: none"> ○ Process all related amended returns as normal amended returns. Do not restrict penalties. Do not input TC 971 AC 178. Allow the adjustment notice(s) to generate. ○ Send Letter 916C with the following language using two open paragraph(s): "Our records show that the IRS already has an |

| | |
|--|---|
| | <p>open examination for one or more of the years covered by your submission. For this reason, you are not eligible for the penalty relief provided under the Streamlined Procedures." "You should contact the examiner assigned to your pending examination to discuss the applicability of penalties and any defenses you may have for the years covered by your submission."</p> <ul style="list-style-type: none"> o Notate CIS case notes, "Streamline case worked as normal due to open examination." o Forward the case to Exam, per the AIMS data, after processing. |
|--|---|

9. To complete adjustments amended returns filed under the SDO:

1. Input a Transaction Code (TC) 971 Action Code (AC) 178, using the amended return received date as the transaction date, to each affected tax year. TC 971 AC 178 denotes Streamlined Filing Compliance. The xClaim tool has been programmed to allow AC 178.
2. Ensure the payments are allocated correctly among the affected tax years (including the MFT 13 civil penalty module) according to the calculations made on the taxpayer certification. If not, follow normal credit transfer procedures using appropriate credit freeze codes to ensure no erroneous refunds occur.
3. Use all normal adjustment procedures, including the use of IAT tools, when making the tax assessment to each tax year, with the following exception: Restrict the failure to file and failure to pay penalties on each tax year by inputting TC 160 and TC 270 for zero dollars.

NOTE: If any payments were transferred, use appropriate posting delay codes on the adjustment(s) to ensure the adjustment does not post before the payments are posted correctly.

4. Assess the 5 percent miscellaneous penalty on MFT 13 on the most recent tax year for which an amended Form 1041 was submitted. Assess the penalty based on the taxpayers calculation. Input TC 240 with blocking series 52 and penalty reason code 708.
5. Allow the adjustment notices to generate. Do not correspond with the taxpayer(s) because they are advised on IRS.gov that they may receive a balance due notice or a refund if the tax or interest is not calculated correctly.

EXCEPTION: If the miscellaneous penalty is more than \$60,000 and fully paid, use hold code 3 on the MFT 13 adjustment.

6. # #

IRM 21.8.2.18.1 Added chapter 4.

1. As of 2001, the Form W-8 series documents replaced the existing forms in paragraph (3) below. The W-8 series documents were again modified in 2014 as part of the implementation of the Foreign Account Tax Compliance Act (FATCA) to include documentation requirements applicable under FATCA.
2. The change in the form was necessary to reflect changes made to the regulations under IRC § 1441. Further changes to the Form W-8 series were required to reflect the new regulations under IRC § 1446 and IRC § 1471-1474 (FATCA).
3. The chart below shows the forms that became obsolete and their replacements effective beginning (generally) in 2014.

| Obsolete Form | New Form W-8 Series Replacement |
|---|--|
| W-8, <i>Certificate of Foreign Status</i> | Form W-8BEN-E, <i>Certificate of Status of Beneficial Owner for United States Tax Withholding and Reporting (Entities)</i> Form W-8BEN, <i>Certificate of Foreign Status of Beneficial Owner for United States Tax Withholding and Reporting (Individuals)</i> |
| Form 1001, <i>Ownership, Exemption, or Reduced Rate Certificate</i> | Form W-8BEN-E, <i>Certificate of Status of Beneficial Owner for United States Tax Withholding and Reporting (Entities)</i> Form W-8BEN, <i>Certificate of Foreign Status of Beneficial Owner for United States Tax Withholding and Reporting (Individuals)</i> |
| Form 4224, <i>Exemption from Withholding of Tax Income Effectively Connected with the Conduct of Business in U.S.</i> | Form W-8ECI, <i>Certificate of Foreign Person's Claim That Income Is Effectively Connected With the Conduct of a Trade or Business in the United States</i> |
| Form 8709, <i>Exemption From Withholding on Investment Income of Foreign Governments</i> | Form W-8EXP, <i>Certificate of Foreign Government or Other Foreign Organization for United States Tax Withholding and Reporting</i> |
| | Form W-8IMY, <i>Certificate of Foreign Intermediary, Foreign Flow-Through Entity, or Certain U.S. Branches for United States Tax Withholding and Reporting</i> NOTE: This is a new form and does not replace a prior form. |
| | Form W-8CE, <i>Notice of Expatriation and Waiver of Treaty Benefits</i> |

4. **CAUTION:** When the nonresident alien files a claim for erroneous backup withholding:
 - a. Return the claim to the taxpayer, and
 - b. Advise the taxpayer to file the appropriate tax Form (1040NR Individual, 1120-F Corporation) with a copy of the 1099 or Form 1042-S attached.

IRM 21.8.2.18.2 Updated Form W-8BEN "Title" and added chapter information.

Form W-8BEN, Certificate of Foreign Status of Beneficial Owner for United States Tax Withholding and Reporting (Individuals), and Form W-8BEN-E, Certificate of Status of Beneficial Owner for United States Tax Withholding and Reporting (Entities)

1. The Forms W-8BEN and W-8BEN-E are used by individuals and entities, respectively, to establish their foreign status and, for entities, to establish their status under chapter 4.
2. If the income is considered "fixed or determinable annual or periodic income", such as interest, dividends, rents, royalties, premiums, annuities, profits, gains, etc., the nonresident alien recipient must provide Form W-8BEN to the withholding agent in order to claim a reduced, or exemption from, withholding under a United States tax treaty.
3. A foreign partner may submit Form W-8BEN to qualify a partnership to use a preferential rate of withholding under § 1446 relating to the foreign partner submitting the form.
4. If an individual taxpayer submits a loose Form W-8BEN or any W-8 series document, return it to the individual. The taxpayer must provide the form to their withholding agent/financial institution. Form W-8BEN should not be sent to the Service.
5. Associate loose Form W-8 series documents sent in by business taxpayers with their withholding tax return (i.e., Form 1042).

IRM 21.8.2.18.3 Added chapter 4.

1. The Form W-8ECI is filed by foreign persons who are beneficial owners of U.S. source income that is, or is deemed to be, effectively connected with a trade or business in the United States and may be eligible for exemptions from Chapter 3 and 4 withholding. Effectively connected income from a U.S. trade or business is described as "income from services performed" or "fixed or determinable annual or periodic income" (e.g., interest, dividends, rents and certain similar amounts), if the income is from assets used in, or held for the conduct of that trade or business, or the activities of that trade or business were a material factor in the realization of the income.

2. Income that is "effectively connected", which is earned other than through a partnership, may be exempt from Chapter 3 and 4 withholding only if the nonresident alien is materially involved in the operation of the trade or business, as opposed to merely being a passive investor.
3. Foreign persons are generally subject to U.S. tax at a 30% rate on income they receive from U.S. sources, however, no withholding under IRC § 1441 or IRC § 1442 and IRC §1471 and IRC §1472 is required on the following types of income when it is, or is deemed to be, income effectively connected with the conduct of a trade or business in the United States. The types of income are:
 - o Personal service income
 - o Income subject to withholding under IRC § 1445 (disposition of U.S. real property interests), and
 - o Income subject to withholding under IRC § 1446 (foreign partner's share of effectively connected income)
4. A foreign person is defined as a:
 - o Nonresident alien individual
 - o Foreign corporation
 - o Foreign partnership
 - o Foreign trust
 - o Foreign estate, or
 - o Any other person that is not a U.S. person
5. The Form W-8ECI, Certificate of Foreign Person's Claim for Exemption from Withholding on Income Effectively Connected with the Conduct of a Trade or Business in the United States, is used by foreign persons to:
 - o Establish that they are a foreign person
 - o Claim that they are the beneficial owner of the income for which Form W-8ECI is being provided
 - o Claim that the income is effectively connected with the conduct of a trade or business in the United States
6. The Form W-8ECI is not filed with the IRS. It must be filed with, and maintained by, the withholding agent when a recipient considers their "effectively connected income" exempt from withholding. Return loose forms to the preparer of the form.

IRM 21.8.2.18.4 Added chapter 4.

1. Investment income (stock, bonds and other domestic securities, interest on deposits in banks, and payments from any other source) earned in the United States by foreign governments, international organizations, foreign central bank of issue, foreign tax-exempt organizations, foreign private foundations, or the government of a U.S. territory is generally exempt from Chapter 3 and 4 withholding, if the income is not derived from a commercial activity or received from or by a controlled commercial entity.
2. Foreign governments, international organizations foreign central bank of issue, foreign tax-exempt organizations, foreign private foundations, or the

government of a U.S. Territory must file Form W-8EXP with the withholding agent to:

- Establish that they are a foreign person
- Claim that they are the beneficial owner of the income for which Form W-8EXP is being filed, and
- Claim a reduced rate of, or exemption from, withholding

3. The withholding agent must keep Form W-8EXP for at least four years after the end of the year in which the income to which it applies is paid. Form W-8EXP should not be sent to the IRS.

IRM 21.8.2.18.5 Added chapter 4.

1. Foreign persons are subject to U.S. tax at a 30% rate on income they receive from U.S. sources that consists of:
 - Interest
 - Dividends
 - Rents
 - Premiums
 - Annuities
 - Compensation for, or in expectation of services performed, or
 - Other fixed or determinable annual or periodical gains, profits or income
2. This tax is imposed on the gross amount paid and is generally collected by withholding on that amount.
3. A payment is considered to have been made whether it is directly to the beneficial owner or to another person, such as an intermediary, agent, trustee, executor, or partnership for the benefit of the beneficial owner.
4. Form W-8 IMY must be provided to a withholding agent by:
 - A foreign person, or a foreign branch of a U.S. person, to establish that it is a qualified intermediary that is not acting for its own account, to represent that it has provided or provides a withholding statement for withholding responsibility under chapter 3 or 4
 - A foreign person to establish that it is a non-qualified intermediary that is not acting for its own account, and if applicable, to certify its chapter 4 status or to establish that it is using the form to transmit withholding certificates that provides a withholding statement as required

NOTE: A U.S. person cannot be a non-qualified intermediary.

- A U.S. branch of certain foreign banks or foreign insurance companies or a territory financial institution to represent that the income it receives is not effectively connected with the conduct of a trade or business within the United States and to evidence that it is treated as a U.S. person or to certify to its chapter 4 status
- A flow-through entity to represent that it is either a withholding foreign partnership or withholding foreign trust, and provides a withholding

statement, as required, or a non-withholding foreign partnership or a non-withholding foreign simple or grantor trust (The income which it receives is not effectively connected with a U.S. trade or business, and it has provided a withholding statement as required.)

- A partnership or grantor trust that is a partner in a partnership and is allocated effectively connected taxable income
- A qualified securities lender (QSL) certifying that it is acting as a QSL with respect to U.S. source substitute dividends pursuant to a securities lending transaction
- A non-participating FFI (NPFFI) acting as an intermediary or a flow-through entity transmitting documentation for exempt beneficial owners for a payment subject to chapter 4 withholding (effective for 2014)
- A foreign intermediary or flow-through entity holding accounts with a PFFI or registered deemed-compliant FFI for purposes of documenting the chapter 4 status of the account holder (when required) (effective for 2014)
- A PFFI or registered deemed-compliant FFI for chapter 4 purposes to establish that Form 1099 is not required to be provided by the withholding agent with respect to payments to U.S. nonexempt recipients (effective for 2014)

5. Form W-8 IMY must be provided to the withholding agent or payer before income is paid or credited on behalf of the beneficial owner. Form W-8 IMY should not be sent to the Service.

NOTE: Failure to provide a Form W-8 IMY, or failure to provide necessary documentation and withholding statements, may lead to withholding at a 30% rate, or the backup withholding rate.

IRM 21.8.2.18.8 Added chapter 4.

1. Form W-9, *Request for Taxpayer Identification Number and Certification*, replaced Form 1078, *Certificate of Alien Claiming Residence in the United States*, to comply with the new regulations under Chapter 3 (IRC §§ 1441-1446) and related sections of the Internal Revenue Code.
2. A person who is required to file an information return with the IRS must obtain a correct Taxpayer Identification Number (TIN) to report:
 - Income paid to them
 - Real estate transactions
 - Mortgage interest they paid
 - Acquisition or abandonment of secured property
 - Cancellation of a debt
 - Contributions they made to an IRA
3. The form is used by a U.S. person (including a resident alien) to give their correct TIN to a requester, when applicable, to:

- Certify that the TIN is correct (or to show that the taxpayer is waiting for a number to be issued)
- Certify that the taxpayer is not subject to backup withholding, or
- Claim exemption from backup withholding if the taxpayer is a U.S. exempt payee

4. Due to regulatory changes, Form W-9 serves several functions:

- Vehicle for U.S. persons to report Taxpayer Identification Numbers (ITINs) to certain withholding agents
- Vehicle for informing withholding agent that the payee is a U.S. person
- Vehicle for a U.S. person to claim tax treaty exemptions
- Establish an entity's chapter 4 status (when applicable) as other than a specified U.S. person

IRM 21.8.2.19.2 Deleted subsection because the information (Form 8891) is obsolete per IR 2015-70 and renumbered remaining subsections.