



LARGE BUSINESS AND
INTERNATIONAL DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
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MEMORANDUM FOR ALL EMPLOYEES ASSIGNED TO IRC 965 EXAMINATIONS

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SUBJECT: Reissued Updated Interim Guidance for Examinations with IRC
965 Issues – Statute Considerations, Examination
and Classification

The purpose of this memorandum is to reissue interim guidance memorandum LB&I-04-0924-011, dated September 6, 2024, which provides guidance for employees (revenue agents and examiners) regarding special statute rules while conducting examinations with an IRC 965 transition tax issue identified.

Background/Source(s) of Authority: This memorandum provides additional guidance to employees regarding the IRC 965(k) six-year statute of limitations on assessment for returns with an IRC 965 transition tax. This guidance does not cover returns subject to the centralized partnership audit regime under Bipartisan Budget Act of 2015 (BBA) or TEFRA partnerships. More specifically, this additional guidance:

- Provides guidance to the field on the authority to allow the IRC 6501(a) three-year statute of limitations to expire on the portion of the taxpayer's income tax liability that is not covered by the IRC 965(k) six-year statute of limitations (that is, on the portion of the tax liability other than the taxpayer's IRC 965 net tax liability).
- Applies to all cases within the IRC 965 Campaign, IRC Section 965 for Individuals Campaign, and any other cases where available information indicates that the taxpayer incorrectly calculated the IRC 965 net tax liability or failed to report an IRC 965 inclusion, deduction, or tax.

Procedural Change: The updated procedures are found in Attachment 1.

Effect on Other Documents: This memorandum may be extended or incorporated into IRM 4.46.5.

Contact: For IRC 965 Campaign contact: LB&I CBA14 965 Campaign. For the IRC Section 965 for Individuals Campaign contact: LB&I IIC Foreign Entities IPN.

Attachment

Distribution: www.irs.gov

Attachment 1 – IG LB&I-04-0926-0006

IRM 4.46.5.xx

Guidance for Agents Regarding the IRC 965(k) Six-Year Statute of Limitations on Assessment for Returns with IRC 965 Issues

Scope of Examination

Examiners should take appropriate steps to develop the facts, law, argument, and appropriate penalties properly for all cases prior to the issuance of a statutory notice of deficiency. If a case is nearing the IRC 6501(a) three-year statute of limitations date and the taxpayer will not sign a statute extension, the examiner and manager will need to determine if a statutory notice of deficiency should be issued. If a statutory notice of deficiency is not issued before the IRC 6501(a) statute of limitations expires, there may be restrictions on adjusted items, unless there is a different statute of limitations keeping the assessment open. IRC 965(k) provides a six-year statute on assessment with regard to only the IRC 965 net tax liability, while IRC 6501(e)(1)(C) provides a six-year statute on assessment with regard to the entire return. It should be noted that generally only one statutory notice of deficiency may be issued if the taxpayer files a petition with the tax court after receiving it. The opportunity to raise additional deficiencies in tax court is also subject to limitations.

The IRC 965 net tax liability is generally applicable in the 2017 and/or 2018 tax years and, in certain cases involving pass-through entities, 2019 (“the inclusion year”). IRC 965(k) generally provides that the statute of limitations on assessment will not expire before six years after the return for the inclusion year is filed. The IRC 965(k) six-year period of limitations applies only to assessment of the IRC 965 net tax liability, the calculation of which includes (but is not limited to) the IRC 965(a) inclusion and IRC 965(c) deduction. An election under IRC 965(h) allows a taxpayer to pay the IRC 965(h) net tax liability in installments over an eight-year period. The amounts deferred under IRC 965(h) are liabilities for and assessed in the original year of inclusion, not the year of payment, and accordingly the IRC 965(k) period of limitations only applies to the IRC 965 inclusion year (that is, **the IRC 965(k) six-year period of limitations on assessment is irrelevant to the assessment of tax in the years of the deferred payments, except to the extent of a separate IRC 965 net tax liability to be assessed in the later year and that would trigger a separate application of IRC 965(k)).** In addition, if an S corporation shareholder makes an election under IRC 965(i), the assessment of IRC 965(i) net tax liability is deferred until a triggering event occurs. Nevertheless, the IRC 965(k) period of limitation applies with respect to the inclusion year, not the triggering event year.

Ideally, local counsel should be consulted early in the examination to help determine the relevant tax years and whether any special statute of

limitations provisions apply. However, it is ultimately the responsibility of the examination group to determine which tax years to open for examination.

Statute of Limitations – In General

Examiners may receive campaign cases with limited time remaining on the IRC 6501(a) three-year statute of limitations or an expired IRC 6501(a) statute of limitations with an “RR” alpha code already assigned to the return by Planning and Special Programs (PSP). Examiners that receive cases with an “RR” alpha code already assigned by PSP must follow the steps below if the IRC 6501(a) statute of limitations is open when the return is received in the examining group.

Examiners may also receive campaign cases without an “RR” alpha code assigned by PSP or discover IRC 965 issues while examining other returns. When these returns have limited time remaining on the IRC 6501(a) three-year statute of limitations, the examiners must update the AIMS database to reflect the appropriate alpha code and follow the steps below. If an IRC 965 issue is discovered on a return where the IRC 6501(a) statute of limitations is expired, the alpha code must be updated, and a Form 15042, Memorandum Approval Request to Allow the Normal Statute Assessment of Limitations to Expire, should be completed.

IRM 25.6.23.5.7.2 and Exhibit 25.6.23-3 provide the authority for a team manager to allow the IRC 6501(a) assessment statute to expire, in other than joint investigation situations. The team manager has the authority and the responsibility to decide whether it is in the government’s best interest to let the IRC 6501(a) assessment statute expire in reliance on an IRC section which serves to extend the IRC 6501(a) three-year assessment statute of limitations. The IRM further instructs that the decision on each case should be documented, discussed, and approved, in writing, by the territory manager.

If additional examination activity relating to IRC section 965 is warranted, the IRC 6501(a) statute of limitations or extended assessment period (if ending with the IRC 965(k) six-year period) may be allowed to expire. In those instances, the following steps must be followed:

1. The examiner must timely and properly make a request to the taxpayer to extend the assessment statute of limitations and document the file accordingly with the request and the taxpayer’s response (or lack of response). If there is not enough time remaining on the statute when the return is received by the exam team, the team manager can choose not to solicit a statute extension. The team manager should document the reason for not soliciting a statute extension on Form 895, Notice of Statute Expiration, and on Form 15042 (see IRM 25.6.23.5.7.1).
2. Prior to the expiration of the IRC 6501(a) or extended assessment statute, the examiner must discuss the decision to allow the statute of limitations to expire with the team manager and obtain team manager approval in writing.

The case file will be documented accordingly to include a Form 15042 signed by the team manager, concurred with, in writing, by the territory manager. The form should fully set forth the rationale and risk calculus to support the conclusion to allow the assessment statute to expire.

3. The file should include documentation to support the special conditions that require the examiner to allow the IRC 6501(a) or extended statute of limitations to expire. In appropriate cases, the documentation should include the statement "It was determined that there is a likelihood in this case that the taxpayer incorrectly calculated or failed to include the net tax liability under IRC 965".

Prior to the expiration of the IRC 6501(a) or extended assessment statute, but not more than 180 days before the statutory period for assessment expires (IRM Exhibit 25.6.23-3), the AIMS database should be updated to reflect the appropriate alpha code as follows:

- RR – Various Other IRCs that Override IRC 6501(a), used for the IRC 965(k) six-year statute for assessment **limited to the net tax liability under IRC 965**, or
- NN – Substantial Omission of Items, if the exam team determined there is likely an omission of subpart F income including but not limited to an IRC 965(a) inclusion (see IRC 6501(e)(1)(C)), or greater than 25 percent omission, or greater than \$5,000 unreported foreign gross income attributable to specified foreign financial assets, not **limited** to the net tax liability under IRC 965.

When the examination is complete and the case is ready to close, the "RR" alpha code statute must be reviewed for accuracy. Unless there is a closing agreement containing specific language waiving the statute of limitations, the "RR" alpha code statute cannot be used to close a case. The "RR" alpha code statute must be updated to the appropriate numeric statute date or other alpha code statute. When a case is closed as either a "no change" (disposal code 02) or a "no change with adjustments" (disposal code 01), the appropriate statute must revert to the actual statute expiration date.

A Form 3999, Statute Expiration Report **is not required if:**

1. The only issue on the return was the 965 issue, and
2. The decision to allow the statute of limitations to expire was properly documented on Form 15042 in the case file.

Refer to IRM 25.6.23.5.7.2 and IRM 25.6.1.13.2.9 for guidance on manager's authority and responsibility to allow the normal assessment statute to expire and statute expiration reporting responsibilities. The Statute Expiration Report, Form 3999, is not required if the IRC 6501(a) or extended assessment statute was expired when the return was received by group. Contact the LB&I Policy Office at LB&I Policy Office Gateway and select Create a Request to submit questions regarding Form 3999, Statute Expiration Report.

In instances where the decision to allow the IRC 6501(a) or extended assessment statute to expire was discussed with the team manager, concurred by the territory manager, and documented accordingly, all parties involved in the decision will be deemed to have acted appropriately with respect to the statute of limitations issues.

Form 15042 will be used to document your decision to continue examination of a return beyond the expiration of the IRC 6501(a) statute of limitations.

Statute of Limitations – Investor Level Statute Control (ILSC) Pass-Through Entities

An ILSC pass-through Entity is defined in IRM 4.31.5.2. An ILSC pass-through entity is any S corporation, or partnership that does not fall under the provisions of TEFRA or elects out of the Bipartisan Budget Act of 2015 (BBA) provisions. In addition, the statute of limitations is generally not controlled at the entity level.

The group controlling the “key case” is responsible for statute control and securing extensions for ILSC pass-through entity returns and for **all** related “investor” returns. See IRM 25.6.23.4.5.

An ILSC pass-through entity return may be updated to a “GG” alpha code statute rather than an “RR” alpha code statute by PSP since IRC 965(k) and IRC 6501(e)(1)(C) statutes generally do not apply to the ILSC pass-through entity return. The IRC 965(k) and IRC 6501(e)(1)(C) statutes may apply at the investor level of an ILSC return.

An ILSC pass-through entity return may be received from PSP with a “GG” alpha code statute, an “RR” alpha code statute, or the ILSC pass-through entity’s non-alpha code statute. The ILSC pass-through entity return may be updated to a “GG” alpha code statute after properly documenting the determination on Form 895. Attach Form 14769, S Corporation – Statute Analysis Tool, (or its equivalent) for an S corporation or Form 15260, Determination of pass-through Audit Regime, (or its equivalent) for a partnership, as appropriate, to the Form 895.

There is a waiver for filing Form 3999 for certain returns classified for examination for the IRC 965 Campaign or the IRC Section 965 for Individuals Campaign. As an S corporation can be subject to certain entity level taxes, Form 3999 is not required for an S corporation return if the entity level three-year IRC 6501(a) statute expires within 180 days of the assignment of the associated S corporation return to the team manager’s group and the Form 14769 (or its equivalent) is documented within the 180 days.

There also is a waiver for filing Form 3999 for certain returns related to an ILSC pass-through entity return that is part of the 965 Campaign or the IRC Section 965 for Individuals Campaign. Form 3999 is not required for the investors’ returns if the three-year IRC 6501(a) statute expires within 180 days of the assignment of the associated

pass-through entity's return to the team manager's group if the associated pass-through entity is an ILSC pass-through entity return and the investor's statute is properly documented on Form 15041, Investor level Statute Control (ILSC) Pass-Through Entity Intent Not to Pursue Investor – Statute Protection, or Form 15042 (or its equivalent) (to update to an "RR" alpha code statute) within the 180 days. See IRM 25.6.23.4.5.1 for more information.

For S corporation returns with an IRC 6501(a) statute outside the 180 days when assigned to the team manager's group, complete Form 14769 to determine if entity level taxes may be applicable requiring an extension request of the S corporation level IRC 6501(a) statute of limitations. If no entity level taxes may be applicable, then update the S corporation to a "GG" alpha code statute. If entity level taxes may be applicable, examiners should request an extension of the S corporation's IRC 6501(a) statute. If the S corporation will not extend the statute of limitations, determine if a statutory notice of deficiency should be issued or complete Form 15042 (or its equivalent) before updating the ILSC pass-through entity return to a "GG" alpha statute code. It is recommended the team manager consult local counsel before updating to the "GG" alpha code statute when entity level taxes may be applicable and the S corporation will not sign a statute extension as the Service's ability to assess taxes related to IRC 965 may be impacted.

For investor returns with an IRC 6501(a) statute of limitations in excess of 180 days from the date of assignment of the corresponding ILSC pass-through entity return to the team manager's group, examiners should either complete Form 15041 following IRM 25.6.23.4.5.1 or follow steps 1 through 3 in the Statute of Limitations – In General section of this memo before updating the investor level statute to an "RR" alpha code statute.

Form 3999 is required if the ILSC pass-through entity return or ILSC investor returns' IRC 6501(a) statute expires within 180 days after assignment of the associated pass-through entity's return to the team manager's group, and without proper documentation within the 180-day period.

Appeals

IRM 25.6.23.7.1 requires unagreed non-TEFRA cases closing to Appeals have a minimum of 395 days remaining on the assessment statute expiration date (ASED) at the time the case is received by Technical Services. This allows the case to be transferred with the requisite 12 months (365 days) remaining on the ASED for acceptance by Appeals.