

## IRM PROCEDURAL UPDATE

**DATE:** 05/15/2026

**NUMBER:** sbse-04-0526-0531

**SUBJECT:** Amended to Incorporate Section 70433 of One, Big, Beautiful Bill Act (Public Law 119-21)

**AFFECTED IRM(s)/SUBSECTION(s):** 4.23.8

**CHANGE(s):**

**RM 4.23.8.1 - Updated the title of the subsection to "Program Scope and Objectives" to be consistent with IRM 1.11.2.2.4, Address Management and Internal Controls**

(1) **Purpose:** IRM 4.23.8 discusses the factors to consider when determining an employment tax liability, including interest-free provisions.

(2) **Audience:** This section contains instructions and guidelines for all Large Business & International (LB&I), Tax Exempt/Government Entities (TE/GE), and Small Business/Self-Employed (SB/SE) employees dealing with employment tax issues.

(3) **Policy Owner:** Director, Specialty Examination Policy of the Small Business/Self-Employed Division.

(4) **Program Owner:** Program Manager - Employment Tax Policy.

(5) **Primary Stakeholders:**

- Employment Tax – Workload Selection and Delivery (CTCO:S:E:HQ:ECS:S:ETEGCS:EWSD).
- Specialty Examination - Employment Tax (CTCO:S:E:SE:ET).
- Specialty Examination Policy - Employment Tax Policy (CTCO:S:E:HQ:SEP:EMTP).
- Other areas that may be affected by these policies and procedures include Independent Office of Appeals (Appeals), Counsel, SB/SE Examination, LB&I, and TE/GE.

(6) **Scope:** This IRM, Determining Employment Tax Liability, is for all examiners conducting examinations of employment tax returns

(7) **Program Scope:** The mission of Employment Tax Policy is to establish effective policies and procedures, and to support compliance with employment tax laws.

**IRM 4.23.8.1.2(3) - Replaced URL/web address with a plain language hyperlink. Updated paragraph due to the reorganization that resulted in one Deputy Commissioner.**

(3) A website, Search Servicewide Delegation Orders, located at IMD Search Servicewide Delegation Orders provides a searchable list of Servicewide Delegation Orders issued by the Commissioner of the Internal Revenue, or on their behalf by the deputy commissioner. Delegation Orders pertaining to each IRS business process can be found in IRM 1.2.2, *Servicewide Delegations of Authority*.

**IRM 4.23.8.1.3 - Updated title to "Roles and Responsibilities" to be consistent with IRM 1.11.2.2.4, Address Management and Internal Controls.**

(1) Director, Specialty Examination Policy is the executive responsible for the procedures and updates addressed in this IRM.

(2) Director, Specialty Examination is the executive responsible for examination operational compliance.

**IRM 4.23.8.1.4 - Updated title to "Program Management and Review" to be consistent with IRM 1.11.2.2.4, Address Management and Internal Controls.**

(1) Program Goals: The processes and procedures provided in this IRM are consistent with the objectives or goals that are addressed in IRM 1.1.16.5.3.3, *Employment Tax Examination*, and IRM 1.1.16.5.5.2.2, *Employment Tax Policy*.

(2) Program Effectiveness: Program goals are measured with Employment Tax Embedded Quality Performance Reports that monitor whether quality attributes are applied uniformly and consistently.

(3) Annual Review: Program Manager of Employment Tax Policy is responsible for reviewing the information in this IRM annually to ensure accuracy and promote consistent tax administration.

**IRM 4.23.8.1.5 - Added subsection titled "Program Controls" to document the reviews and quality assurance activities associated with the Employment Tax Program and to be aligned with IRM 1.11.2.2.4, Address Management and Internal Controls. All subsequent subsections were renumbered accordingly.**

(1) All information management systems have safeguard measures in place that address key components of Information Technology (IT) security requirements to restrict access to sensitive data.

(2) The ET program operates under the framework of internal controls designed to ensure that examinations are conducted consistently, accurately, and in accordance with IRC, regulations, and IRS policies. Key controls include:

- Periodic reviews of examination case files by group managers,
- Standardized training for examiners, and
- Review of closed case files is conducted to monitor adherence to established procedures.

(3) The ET program has established a separation of duties of certain users' roles:

- Policy and procedure reside with ET Policy that is within SB/SE Specialty Examination Policy.
- Case selection reside with ET-WSD within SB/SE Examination Case Selection.
- Quality review reside within SB/SE Exam Quality and Technical Support.

(4) Embedded Quality is applied through a common set of attributes, capturing data within the following systems: Embedded Quality Review System (EQRS) for group management reviews and National Quality Review System (NQRS) for closed case reviews.

(5) ET group managers regularly evaluate workload management, risk assessments, and resource allocation within their groups. The managers achieve the evaluations via workload and individual case reviews of the examiners within their group. The reviews provide feedback to examiners on their effectiveness and identify opportunities for improvements.

(6) The Issue Management System (IMS) is required to be used during employment tax examinations by ET examiners assigned to Specialty – ET Operations.

(7) ET examiners will use the Employment Tax Lead Sheets (ETLS) developed specifically for employment tax cases.

(8) ET examiners working ET Large Cases will use Large Case Lead Sheets (LCLS). LCLS are developed specifically for large case employment tax cases. ET examiners working ET Large Cases will follow workpaper preparation, specific examination techniques, and case closing procedures unique to these types of examinations.

(9) The Specialty Employment Tax Application (SETA) is a web-based application that ET examiners use in ET examinations to generate most of the documents needed to prepare an examination report and close their examination.

**IRM 4.23.8.1.8 - Revised content in paragraphs (2), (3), and (5) for clarity and replaced URL/web address to internal sites with a plain language hyperlink. Added paragraph (7) informing employees to seek guidance from IRM 4.2.2, Disaster Assistance Relief,**

**when seeking guidance for making, communicating, and documenting compliance relief determinations when a taxpayer has been affected by a federally declared disaster and may qualify for relief from compliance activity.**

(1) The following table lists the primary sources of guidance:

Source	Title	Description of Guidance
IRM 4.23	Employment Tax IRM	IRM sections, the majority of which are owned by SB/SE - Specialty Examination Policy, provide Servicewide instructions for employees of all operating divisions involved with the correct filing, reporting, and payment of employment taxes. IRM 4.23 serves as the foundation for consistent administration of employment taxes by various IRS operating divisions.

(2) Other helpful information sources include:

- SB/SE Employment Tax Small Business Knowledge Base provides guidance, resources and information for ET examiners to aid in identifying, developing, and resolving employment tax issues.
- Specialist Referral System can be used by any employee, regardless of operating division. In addition to requesting assistance or a referral, SRS may be used to submit informal questions or to request a consultation with an employment tax specialist to discuss employment tax potential in an examination.
- Contacts, Tools, and Training provides contact information and program assignments for SB/SE ET Policy Analysts and SB/SE ET group contacts and areas of coverage.

(3) The Taxpayer Bill of Rights (TBOR) lists rights that already existed in the IRC, putting them in simple language and grouping them into 10 fundamental rights. Employees are responsible for being familiar with and acting in accord with taxpayer rights. For additional information about TBOR, see IRC 7803(a)(3) , Pub 5170, *Taxpayer Bill of Rights*, or Taxpayer Bill of Rights.

(4) The Taxpayer Advocate Service (TAS) is an independent organization within the IRS, led by the National Taxpayer Advocate, that helps taxpayers and protects taxpayer rights. TAS offers free help to taxpayers when a tax problem is causing a financial difficulty, when they've tried and been unable to resolve their issue with the IRS, or when they believe an IRS system, process, or procedure just isn't working as it should. TAS strives to ensure that every taxpayer is treated fairly and knows and understands their rights under the TBOR. TAS has at least one taxpayer advocate office located in every state, the District of Columbia, and Puerto Rico.

(5) IRS employees are required to protect the privacy of sensitive but unclassified (SBU) data for taxpayers and personnel, including personally identifiable information (PII), such as federal tax information (FTI), tax return, financial, and employment information regardless of format. For further information, see the Privacy, Government Liaison and Disclosure (PGLD) maintained knowledge base homepage.

(6) Overall responsibility for civil penalty programs is assigned to Office of Servicewide Penalties (OSP). OSP is charged with coordinating policy and procedures concerning the civil penalty program administration, ensuring consistency with the penalty policy statement, reviewing and analyzing penalty information, researching penalty effectiveness on compliance trends, and determining appropriate action necessary to promote voluntary compliance. For further understanding of the civil penalty program and penalty relief refer to the Penalties Knowledge Base Homepage.

(7) Employees should seek guidance from IRM 4.2.2, *Disaster Assistance Relief*, for making, communicating, and documenting compliance relief determinations when a taxpayer has been affected by a federally declared disaster and may qualify for relief from compliance activity.

**IRM 4.23.8.11(3) - Updated the second note in paragraph (3) to improve clarity and readability of the electronic filing requirements set forth in Treas. Reg. 301.6011- 2.**

(3) For electronic submissions, refer the employer to the SSA's webpage , Employer W-2 Filing Instructions & Information for services offered to businesses online and Form W-2 filing assistance.

**Note: Prior to January 1, 2024**, if the employer is expected to file 250 or more Forms W-2 or Forms W-2c during a calendar year, they are required to be file them electronically.

**Note: On or after January 1, 2024**, payers required to file 10 or more information returns in a calendar year are required to file them electronically. The 10-or-more requirement is calculated by aggregating certain information returns including Form 1099 series, Form 1042-S and Form W-2 filed with Social Security Administration. For further information, refer to Treas. Reg. 301.6011-2.

**IRM 4.23.8.11.1(5) - Updated the information required to be written in on Form 4668 to conform with the electronic filing requirements set forth in Treas. Reg. 301.6011- 2.**

(5) If the taxpayer does not provide the examiner with Form W-2 or Form W-2c and Form W-3 or Form W-3c at the conclusion of an agreed case, the examiner must include on Form 4668 the number of employees who should receive wage statements, the date to file and furnish the wage statements, and the address of where to send the wage statements.

**For SB/SE, include the following in the information section of Form 4668:**

Furnish Form W-2 (Wage and Tax Statement) or Form W-2c (Corrected Wage and Tax Statement) on or before January 31, [Insert Year], to each of the [Insert number] employees whose wages are adjusted by this report.

File Forms W-2 with Form W-3 (Transmittal of Wage and Tax Statements) or Forms W-2c with Form W-3c (Transmittal of Corrected Wage and Tax Statements) on or before January 31, [Insert year], with the Social Security Administration (SSA).

IRC 6721 and IRC 6722 provide penalties for failure to file and failure to furnish information returns. You must file the information returns electronically if you are required to file 10 or more information returns in a calendar year. To obtain specifications for e-filing your returns, visit the SSA's website at [www.ssa.gov/employer/](http://www.ssa.gov/employer/). If filing paper returns, file with the SSA at the appropriate address in the General Instructions for Forms W-2 and W-3, (Including Forms W-2AS, W-2CM, W-2GU, W-2VI, W-3SS, W-2c, and W-3c).

**Note:** For TE/GE functions: All returns should be sent to SSA directly.

**IRM 4.23.8.13 - Revised the subsection to incorporate the reporting threshold of informational returns that was changed by One, Big, Beautiful Bill Act (Public Law 119-21) Section 70433 and to improve clarity and readability.**

(1) The payor of gambling winnings must report winnings on Form W-2G, *Certain Gambling Winnings*, that total:

- a. For calendar year 2025 and prior, generally \$600 or more. The payor of winnings from a bingo or slot machine win must report winnings of \$1,200 or more. The payor of keno winnings must report winnings of \$1,500 or more.
- b. For calendar year 2026, the minimum threshold amount for reporting gambling winnings (including bingo, slots and keno) is \$2,000.
- c. For calendar years after 2026, the minimum threshold amount for reporting certain payments on certain information returns, including the Form W-2G, will be adjusted yearly for inflation. See inflation-adjusted tax items by tax year or General Instructions for Certain Information Returns (Forms 1097, 1099, 1098, 3921, 3922, 5498, and W-2G) for the threshold amounts.

(2) Certain types of gambling winnings are subject to income tax withholding, known as regular gambling withholding. This applies when the proceeds exceed \$5,000. The current withholding rate is:

- 24% for cash payments

- 31.58% for certain non-cash payments

(3) Gambling winnings subject to regular gambling withholding are:

- a. **State-conducted lotteries:** winnings over \$5,000
- b. **Sweepstakes, wagering pools, or lotteries (not state-conducted):** winnings over \$5,000
- c. **Poker tournament winnings:** more than \$5,000 (see Rev. Proc. 2007-57, I.R.B. 2007-36 for details)
- d. **Other wagering transactions:** such as pari-mutuel pools for horse races, dog races, and jai alai, when proceeds exceed \$5,000 and are at least 300 times the amount wagered

**Note:** No income tax withholding is required on winnings from bingo, keno, or slot machines. However, backup withholding may apply.

(4) **Exceptions:** No income tax withholding is required for winnings from:

- Bingo
- Keno
- Slot machines

**Note:** Backup withholding may still apply in these cases.

(5) **Backup withholding:** If the winner of a reportable gambling payment does not furnish their Taxpayer Identification Number (TIN) to the payor or the regular gambling withholding hasn't been withheld the gambling winnings are subject to backup withholding.

- a. All reportable gambling of winnings are subject to backup withholding, including reportable gambling winning from bingo, keno, or slot machines.
- b. If a payment is already subject to regular gambling withholding, it isn't subject to backup withholding.

(6) **Reporting withholding:** Regular gambling withholding and backup withholding are reported on the payor's Form 945, *Annual Return of Withheld Federal Income Tax* and included on the winner's Form W-2G.

(7) When examining the income tax return of a taxpayer engaged in the business of gambling, the retained copies of the employment tax returns should be requested (including retained copies of Form W-2G) and inspected. Based on this inspection and all other available information, a decision must be made whether the employment tax returns (including the withholding on gambling winnings requirement) warrant an examination.

(8) Where an employment tax examination is warranted, consideration should be given to using a computer assisted examination technique to screen the large volume of transactions for proper withholding and winner identification. The examiner should consider requesting the assistance of a Computer Audit Specialist.

(9) All references to employment tax procedures for the withholding of income tax on wages will apply equally to the withholding of tax on certain gambling winnings.

(10) The report writing instructions for examinations of income tax withholding for Form 945 are contained in IRM 4.23.10, *Report Writing Guide for Employment Tax Examinations*. Additional information on withholding on and reporting gambling winnings can be found in the Instructions for Forms W-2G and 5754 and General Instructions for Certain Information Returns (Forms 1097, 1099, 1098, 3921, 3922, 5498, and W-2G).

**IRM 4.23.8 - Editorial changes throughout the IRM were made to improve clarity, readability, and eliminate redundancies. Updates included correcting website addresses, legal references, titles, spelling, grammar, and IRM references. Web and email addresses were replaced with plain language hyperlinks to enhance accessibility and user experience.**