



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

SMALL BUSINESS/SELF-EMPLOYED DIVISION

March 21, 2024

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Expiration Date: 03/20/2026  
Affected IRM(s): 5.7.3; 5.7.4; 5.7.6

**MEMORANDUM FOR DIRECTOR, FIELD COLLECTION**

**FROM:** Rocco A. Steco, Director, Collection Policy

**Rocco A.  
Steco Jr.**

Digitally signed by  
Rocco A. Steco Jr.  
Date: 2024.03.21  
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**SUBJECT:** Guidance for Proposing Assessment of the Trust Fund Recovery Penalty (TFRP) on Tax Periods with Nonrefundable Credits, Social Security Tax Deferrals, and/or Pending Employee Retention Credit (ERC) Claims

This memorandum supersedes interim guidance previously provided by IRM deviation memorandum SBSE-05-1123-0065. This memorandum provides guidance to Field Collection employees working Trust Fund Recovery Penalty (TFRP) cases impacted by tax periods with nonrefundable tax credits, social security tax deferrals, and pending employee retention credit (ERC) claims.

**Effective Date:** This guidance is effective 03/21/2024 through 03/20/2026

**Source of Authority:** The source of authority for the TFRP is 26 U.S. Code § 6672, Failure to collect and pay over tax, or attempt to evade or defeat tax.

**Background:** During the COVID-19 pandemic, the Families First Coronavirus Response Act (FFCRA), Coronavirus Aid, Relief, and Economic Security (CARES) Act, Consolidated Appropriations Act, 2021 (CAA), and the American Rescue Plan Act (ARP), allowed qualified employers to claim certain nonrefundable credits for eligible tax periods in 2020 and 2021. The Infrastructure, Investment, and Jobs Act (IIJA) retroactively terminated the ERC for the fourth quarter of 2021 for employers other than recovery startup businesses.

In addition, section 2302 of the CARES Act allowed employers to defer the deposit and payment of the employer portion of social security taxes and certain railroad retirement taxes. The payroll tax deferral period began on 03/27/2020 and ended on 12/31/2020. Employers were required to deposit fifty percent of the eligible deferred amount of tax by 12/31/2021 and deposit the remaining amount of deferred tax by 12/31/2022.

Separate from the COVID-19 legislation, eligible employers may also claim a nonrefundable credit for increasing research activities under IRC § 41, Credit for Increasing Research Activities.

### **Tax Periods with Nonrefundable Credits**

Guidance in this memorandum applies to all tax periods where an employer claimed a nonrefundable payroll tax credit, beginning on the year 2017. Nonrefundable credits include:

- Qualified small business payroll tax credit for increasing research activities
- Nonrefundable portion of credit for qualified sick and family leave wages for leave taken before April 1, 2021
- Nonrefundable portion of credit for qualified sick and family leave wages for leave taken after March 31, 2021
- Nonrefundable portion of employee retention credit
- Nonrefundable portion of COBRA premium assistance credit

### **Identifying Tax Periods with Nonrefundable Credits**

Employees must continue to review all employment tax periods for nonrefundable credits **prior** to requesting group manager (GM) approval of the Form 4183, Recommendation re: Trust Fund Recovery Penalty Assessment. Employees can locate nonrefundable credits on the following lines of the applicable employment tax returns:

- Form 941: Line 11 series (2017 – 2024 revisions)
- Form 943: Line 12 series (2017 – 2023 revisions)
- Form 944: Line 8 series (2017 – 2023 revisions)
- Form CT-1: Lines 16 and 17 (2020 – 2023 revisions)

Employees may use Integrated Data Retrieval System (IDRS) command codes, TRDBV and/or BRTVUE, to check for nonrefundable credits on the applicable employment tax module(s). Also, employees can identify nonrefundable credits claimed on a processed amended return by reviewing IDRS command codes, BMFOLT and/or TXMODA, and referring to the table in [IRM 21.7.2.7.6\(2\)](#), COVID-19 Related Employment Tax Relief and Forms 94X-X.

### **Identifying Tax Periods with Social Security Tax Deferrals**

Employees may use IDRS command codes, TRDBV and/or BRTVUE, to identify deferrals:

- Form 941 – Line 13b (Tax Periods: 06/30/2020, 09/30/2020, and 12/31/2020)
- Form 943 – Line 14b (Tax Period: 12/31/2020)
- Form 944 – Line 10b (Tax Period: 12/31/2020)
- Form CT-1 – Line 21 (Tax Period: 12/31/2020)

Social security tax deferrals can be identified by transaction code (TC) 766 with credit reference number (CRN) 280 (**TC 766 CRN 280**). Deferred social security taxes are reversed by a TC 767 after a payment is made (e.g., TC 670) (**TC 767 CRN 280**). If the TC 767 does not timely post following the TC 670, then the taxpayer may receive a refund in error (TC 846), or the payment may incorrectly offset (TC 826) to another period.

### **Identifying Tax Periods with Pending Amended Returns Claiming the ERC**

The TXMODA transaction codes listed below indicate an amended return has been filed:

- TC 971 AC 010 - Amended return/claim forwarded to Accounts Management
- TC 971 AC 012 - Amended return/claim forwarded to Collection
- TC 976 - Posted Duplicate Return
- Freeze Code -A - Duplicate Return Freeze

The ERC was available for wages paid 03/13/2020 – 12/31/2021. For quarterly filers, the ERC for wages paid from 03/13/2020 – 03/31/2020 could only be claimed on the 2020 second quarter employment tax return. Therefore, taxpayers may have filed an amended return (Form 94X-X or CT-1-X) to claim the ERC for the tax periods ending 06/30/2020 – 12/31/2021.

If there are indicators of an amended return on the taxpayer's account, then a copy of the amended return may be available on Account Management Services (AMS). The RO should research AMS for a copy of the amended return by taking the following actions:

- Sign on to IDRS.
- Open AMS.
- Enter the business employer identification number (EIN) in the search box.
- Select, "Alerts".
- Select, "View CII Images".
- Review the CII image list to locate the Form 94X-X for the applicable tax period(s).

On Forms 941-X, the nonrefundable portion of the ERC is reported on line 18a (Nonrefundable portion of employee retention credit), and the refundable portion of the ERC is reported on line 26a (Refundable portion of employee retention credit).

#### Revenue Officer (RO) Procedural Guidance

IF	THEN
The RO identifies a reversed social security tax deferral (TC 767) after a refund (TC 846) or an offset (TC 826)	<ul style="list-style-type: none"> <li>• The RO should send an email to the TFRP mailbox (*SBSE Coll Policy TFRP) with a cc to their GM and local ATFR coordinator <b>prior</b> to requesting GM approval of Form 4183. The email should contain the following information: <ul style="list-style-type: none"> <li>○ Employer name</li> <li>○ EIN</li> <li>○ Related responsible person (RRP) taxpayer identification number (TIN)</li> <li>○ Tax period(s) proposed for assessment of the TFRP that contain the reversed deferral</li> <li>○ Earliest ASER</li> <li>○ Case creation date on ATFR</li> </ul> </li> </ul>
The RO identifies a nonrefundable credit.	<ul style="list-style-type: none"> <li>• The RO should send an email to the TFRP mailbox with a cc to their GM and local ATFR coordinator <b>prior</b> to requesting GM approval of Form 4183. The email should contain the following information: <ul style="list-style-type: none"> <li>○ Employer name</li> <li>○ EIN</li> <li>○ Related responsible person (RRP) taxpayer identification number (TIN)</li> <li>○ Tax period(s) proposed for assessment of the TFRP that contain the reversed deferral</li> <li>○ Earliest ASER</li> <li>○ Case creation date on ATFR</li> </ul> </li> </ul>

IF	THEN
The RO identifies a possible calculation error on ATFR in any other scenario	<ul style="list-style-type: none"> <li>The RO should contact their local ATFR Coordinator for assistance <b>prior</b> to sending the case to the TFRP mailbox for Collection Policy review.</li> </ul>
The TFRP is applicable on a tax period(s) containing a pending ERC claim <b>and</b> the pending ERC claim will full pay the entire tax liability	<p>The RO should:</p> <ul style="list-style-type: none"> <li>Attempt to secure a Form 2750 from all responsible persons to protect the ASER while the case is pending an adjustment that will full pay the liability. <ul style="list-style-type: none"> <li>If the responsible person(s) refuses to sign Form 2750, then the RO should document this information in ICS and ATFR.</li> </ul> </li> <li>Attempt to secure the core documentation needed to assess the TFRP in the event the adjustment is rejected or the credit is disallowed. The RO should not request GM approval of the Form 4183 while the adjustment is pending.</li> </ul> <p><b>Note:</b> If the RO cannot secure Form 2750 but has a Form 94X-X that indicates there will be no trust fund balance once the Form 94X-X is processed, then generally, the RO should not proceed with assessment of the TFRP unless the RO has information to suggest the Form 94X-X is not accurate and/or will be rejected (e.g., there are indications the taxpayer is not <a href="#">eligible</a> for the ERC).</p> <p>If the RO has information to indicate the Form 94X-X is not accurate, then the RO should document their case and speak with their GM and local Fraud Enforcement Advisor (FEA) before pursuing assessment of the TFRP.</p> <p>If the RO has information to indicate the taxpayer is misrepresenting information claimed on their employment tax return, then the RO should consult with their GM, local FEA, and consider making a referral to Employment Tax Exam through the Specialist Referral System.</p>
The TFRP is applicable on a tax period(s) containing a pending ERC claim <b>and</b> the pending ERC claim <b>will not</b> full pay the entire trust fund portion of tax	<ul style="list-style-type: none"> <li>The RO should pursue assessment of the TFRP if indicators of willfulness and responsibility exist (see <a href="#">IRM 5.7.3</a>, Establishing Responsibility and Willfulness for the TFRP).</li> </ul>

### Disposition of ATFR Cases Containing Pending ERC Claims

If the taxpayer's pending ERC claim (via Form 94X-X or CT-1-X) will full pay the entire trust fund balance on **all** tax periods subject to the TFRP, then the RO should send an email to their GM and request transfer of the case on **ATFR only** to **TSIGN #20002117**.

If the ATFR case contains tax periods subject to the TFRP that do not involve an ERC claim, then the RO should contact their local ATFR coordinator and request to move all tax periods

with an ERC claim to a new case. The RO should provide their ATFR coordinator with the case EIN, specific tax period(s) to be transferred, and case creation date on ATFR.

Once the ATFR coordinator moves the tax periods with ERC claims to a new case, the RO should request their GM transfer the case containing the ERC modules to **TSIGN #20002117**. The RO may then continue their TFRP investigation on the non-ERC tax periods.

Collection Policy, Employment Tax (ET) will monitor the cases assigned to TSIGN #20002117 and address the impact on the trust fund balance once the amended return is processed. Employment Tax will reassign the case to the originating RO if the amended return is rejected or results in a partial reduction of the trust fund balance. If the amended return is processed and results in full payment of the trust fund balance, then ET will dispose of the case in ATFR.

### **Disposition of Manually Assessed TFRP Cases on ATFR**

If Collection Policy instructed you to conduct a manual TFRP assessment **outside** of ATFR due to an ATFR calculation error, follow the manual assessment instructions previously provided by Collection Policy and take the following actions to dispose of the case:

- Set the RRP(s) to “not responsible (N)”. The Form 4183 narrative should reflect willfulness, responsibility and collectibility.
- Document the ATFR and ICS case histories with information to state you are assessing the TFRP manually. Document the reason for the manual assessment (i.e., ATFR calculation error) and document the correct amount of TFRP to be assessed per tax period.
- Request managerial approval of Form 4183 via ATFR to prevent the tax periods from migrating to a new case if/when there are subsequent tax periods for the entity. Because you are assessing these tax periods manually, failure to “lock” the modules with a Form 4183 approval in ATFR could result in a duplicate TFRP assessment.
- Do **not** generate Letter 1153, Proposed Trust Fund Recovery Penalty Notification. Confirm the RRP(s) are not on the ‘Pending Letter 1153’ report. If the RRP(s) are on the report, then contact your ATFR coordinator for assistance.
- Select the “LLC case-closure” disposition and send it to your GM for approval **once the manual assessments post to IDRS**. The ASEDR-5 indicator will then upload to IDRS.
- Prepare Form 4844, Request for Terminal Action, and request input of an ASEDR-1 for all modules manually assessed once the ASEDR-5 indicator uploads to IDRS. Send the Form 4844 to Centralized Case Processing (CCP) for input.

You are still required to conduct all TFRP assessment activities required in [IRM 5.7.3](#), [IRM 5.7.4](#), Investigation and Recommendation of the TFRP, and [IRM 5.7.6](#), Trust Fund Penalty Assessment Action, even if completing the TFRP assessment outside of the ATFR system. You **must** secure GM approval of Form 4183 even if you generated the form manually.

**Note:** If you were transferred a case where the prior RO mailed the Letter 1153, then attempt contact with the taxpayer to verify no appeal was sent to the prior RO.

You must also mail the physical TFRP case file to Control Point Monitoring (CPM) as soon as possible via [Form 3210-A](#) in accordance with [IRM 5.7.6.12\(3\)](#), Revenue Officer Assessment Actions. Document the Form 3210-A with the statement, “TFRP assessment completed manually, outside of ATFR”.

The case will **not** appear on CPM’s “Pending Inventory” report because you are not

electronically saving the Form 2749, Request for Trust Fund Recovery Penalty Assessment(s), to the CPM through the ATFR system. As a result, it's important you receive a signed, returned Form 3210-A for the case file you mailed to CPM.

**Contact:** If you have any questions, you or a member of your staff may contact Kerri Hansen, Employment Tax Program Manager, or Program Analysts, Javier Escudero and Mindy Murphy.

**CC:** Director, Civil Enforcement Advice and Support Operations  
Director, Collection Operations – Quality and Technical Support  
Director, Specialty Collection – Offer in Compromise  
Director, Specialty Collection – Insolvency  
Director, Campus Collection  
Director, Appeals, Case and Operations Support  
Taxpayer Advocate Service  
Assistant Division Counsel, SB/SE  
IRS.gov (<https://www.irs.gov>)