



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

SMALL BUSINESS/SELF-EMPLOYED DIVISION

July 26, 2023

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Expiration Date: July 26, 2025
Impacted IRM: IRM 25.6.23

MEMORANDUM FOR ALL CHIEFS AND COMMISSIONERS OF APPEALS, LARGE BUSINESS AND INTERNATIONAL (LB&I), SMALL BUSINESS/SELF-EMPLOYED (SB/SE) AND WAGE AND INVESTMENT (W&I) EMPLOYEES

FROM: Richard L. Tierney
Director, SB/SE Examination

Richard L. Tierney
Digitally signed by Richard L. Tierney
Date: 2023.07.26 13:37:34 -0400

SUBJECT: Interim Guidance for Statute of Limitations Impacted by Fowler

This memorandum issues guidance on statute of limitations until IRM 25.6.23 is updated.

Purpose: To provide guidance when making statute determinations for rejected e-filed returns due to an omitted Identity Protection Personal Identification Number (IP PIN).

Background/Source(s) of Authority: In [Fowler v. Commissioner, 155 T.C. 106 \(2020\)](#), the taxpayer attempted to e-file their return but, it was rejected due to an omitted IP PIN. The court determined the rejected return constituted a valid return under the Beard Test¹ and triggered the running of the assessment period of limitations under [IRC § 6501\(a\)](#), Limitations on Assessment and Collection. Since the IRS failed to issue a statutory notice of deficiency within three (3) years from the filing of the rejected return, the statute was deemed barred. After the Fowler decision, Form 1040 instructions for tax year 2020 and later were updated to state that failure to include an issued IP PIN on the electronic return will result in an invalid signature. Therefore, 2020 and later returns rejected due to an omitted IP PIN do not constitute a valid return.

Procedural Change: See [Attachment Interim Guidance: SBSE-25-0723-0012](#).

Effect on Other Documents: This memorandum supersedes the March 29, 2021 guidance, [Fowler Court Precedent Impact to Statute of Limitations](#). This guidance will be incorporated into [IRM 25.6.23](#), Examination Process-Assessment Statute of Limitations Controls, by a date not to exceed two years from the date of this memorandum.

¹ Beard v. Commissioner, 82 T.C. 766 (1984), decided that a document constitutes a return if (1) the document purports to be a return (2) the document provides sufficient data to calculate tax liability, (3) the taxpayer made an honest and reasonable attempt to satisfy the requirements of the tax law, and (4) the taxpayer executed the document under penalties of perjury.

Effective Date: This memorandum is effective immediately.

Contact: For Field Examination questions, contact Ronald Zarriello, Program Manager, Examination Field and Campus Policy, Field Examination Special Processes. For Campus Exam questions, contact Timothy Tole, acting Program Manager, Examination Field and Campus Policy, Campus Exam and Field Support.

Distribution:

[IRS.gov \(https://www.irs.gov\)](https://www.irs.gov)

Attachment Interim Guidance: SBSE-25-0723-0012

The following guidance only applies if **all** the following conditions are met:

- The taxpayer filed an individual income tax return (Form 1040 series return),
- The primary and/or secondary taxpayer were issued an IP PIN by the IRS,
- The taxpayer attempted to e-file the return,
- The primary and/or secondary taxpayer omitted the IP PIN, and
- The IRS rejected the e-filed return due to an omitted IP PIN (see [Determining if a Return Was Rejected Job Aid](#)).

Reject Code IND-181-01 or IND-183-01 Present

A rejected e-filed return due to an omitted IP PIN will not reflect the ASED on IDRS. Use the following table to determine when the period of limitations begins if Reject Code IND-181-01 or IND-183-01 are present on the taxpayer's transcript.

Reminder: Managers have primary responsibility for initiating and maintaining statute controls. Examiners are responsible for controlling statutes on their assigned cases. See [IRM 25.6.23.4](#), Responsibilities of Managers and Employees.

If...	Then...
<p>The tax year is 2019 or earlier</p> <p>Caution: 2019 or earlier returns with Reject Code IND-181-01 or IND-183-01, which are due to suspected identity theft, do not constitute valid returns and must not be considered when making statute determinations.</p>	<p>The period of limitations begins on the later of 1) the earliest reject date reflecting Reject Code IND-181-01 or IND-183-01, or 2) the unextended statutory due date of the return.</p> <p>Example 1: 2019 return rejected on 03/31/2020 reflecting a Reject Code IND-181-01. The period of limitations begins on 04/15/2020 and the ASED is 04/15/2023.</p> <p>Example 2: 2019 return is rejected on 04/20/2020 reflecting a Reject Code IND-181-01. The return is rejected a second time on 04/25/2020 reflecting Reject Code IND-181-01. The return is accepted by the IRS on 04/30/2020. The period of limitations begins on 04/20/2020 and the ASED is 04/20/2023.</p>
<p>The tax year is 2020 or later</p> <p>Note: 2020 and later returns with Reject Code IND-181-01 or IND-183-01 do not</p>	<p>The period of limitations begins on the later of 1) the date the return is accepted by the IRS, or 2) the unextended statutory due date of the return.</p> <p>Example 1: 2020 return rejected on 03/31/2021 reflecting a Reject Code IND-181-01. The return is accepted by the IRS on 04/25/2021. The period of limitations begins on 04/25/2021 and the ASED is 04/25/2024.</p>

constitute a valid return.	Example 2: 2020 return rejected on 04/30/2021 reflecting a Reject Code IND-181-01. The return is rejected a second time on 05/01/2021 reflecting Reject Code IND-181-01. The return is accepted by the IRS on 05/10/2021. The period of limitations begins on 05/10/2021 and the ASED is 05/10/2024.
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If the ASED reflected on IDRS is accurate, take no further action. If the ASED reflected on IDRS is not accurate, see [Updating the ASED](#).

Updating the ASED

Follow [IRM Exhibit 25.6.23-3](#), Instructions for Updating the Statute on AIMS, and then follow the guidance in the table below:

If...	Then...
After updating the ASED, there are more than 180 days remaining on the statute	Take no further action.
After updating the ASED, there are 180 days or less remaining on the statute	Follow IRM 25.6.23.5.1.4 , Initiation of Controls by Examiner or Specialist – Area Offices and Campus Operations.
After updating the ASED, the statute is expired	See Expired Statute .

Expired Statute

If the statute expired before an assessment, do not make the assessment and take the following steps:

1. Follow function-specific guidance in [IRM 25.6.1.13](#), Barred Assessments/Barred Statute Cases.

Exception: If the next-level manager agrees the statute expired due to Fowler, and it was beyond the control of the assigned first-level manager and employee, select “Other” as the reason for the barred statute and note “Fowler” when completing the Barred Statute Report. Completion of the case history, detailed explanations, or corrective action(s) sections on the Barred Statute Report is not required.

2. Notify the taxpayer when required by IRM 4.2.1.14, Taxpayer Notification of Assessment Statute Expiration and Acceptance of Voluntary Payments on Expired Statute Returns When Taxpayer Was Contacted for Examination.

Note: If the expired statute was discovered after the assessment was made, consult local counsel regarding whether the assessment should be reversed.