DATE: 11/16/2023

NUMBER: wi-21-1123-1090

SUBJECT: Employment and Railroad Tax Returns

AFFECTED IRM(s)/SUBSECTION(s): 21.7.2

CHANGE(s):

IRM 21.7.2.4.9.3.4 Updated instructions for Form 4442 generation in (5) and (8) to account for new Puerto Rico directorate.

(5) If you receive an inquiry concerning **Letter 4148C**, follow the procedures below:

If	And	Then
The entity reflects a TC 000 with a transaction date in the range of January 1, 2015 through September 19, 2016		See (8) below.
Taxpayer states that they opted out of the Form 944 program by the April 1st deadline **Note:** Taxpayer must have submitted a written request and/or made contact via phone and the request was not processed. Accept the taxpayer's word.	The filing requirement was not changed to Form 941 and the 944 Cache is set to the current year and request is received in the current year **Example:** Taxpayer is required to file Form 944 in 2021 and the request is received in 2021.	Allow the taxpayer to continue to file Form 941. 1. Request the originally filed return from Files using the DLN (Document Locator Number) of the unpostable/rejected TC 150. If you are not able to secure the originally filed return, request a signed copy of the originally filed Form 941 from the taxpayer, via fax. (See NOTE below table.) 2. Change the filing requirement to Form 941. 3. Send Letter 3007C to confirm filing requirement change, even if resulting from a phone call.

		4. Transfer all applicable deposits to the Form 941 account. 5. Send Form 941, secured from Files, for processing as the original. (If you are unable to secure the original return from Files and must use a faxed return, edit the received date on faxed forms to reflect a timely filed return. See Note below table.) **Exception:** If you are staffing the toll-free telephone lines at a remote call site, do not follow steps 1-5 above; instead complete Form 4442/e-4442 and route to the Campus AM account paper function within your Directorate or designated campus except Puerto Rico who will send the Form 4442 to the Brookhaven Campus paper function until further notice. Include the DLN of the unpostable/rejected TC 150 on the Form 4442.
Taxpayer states they opted out of the 944 program by the April 1st deadline	The filing requirement was not changed to Form 941 and the 944 Cache is set to the current year and request is received in a subsequent year **Example:** Taxpayer is required to file Form 944 in 2020 and a request is received in 2021.	**DO NOT** change the filing requirement. Explain to the taxpayer they **must** file a Form 944 for the year in question because we are not able to change the 944 filing requirement in a subsequent year.
Taxpayer did not opt out of the 944 program by April 1st		**DO NOT** change the taxpayer's filing requirement to Form 941. 1. Instruct the taxpayer that they **must** file Form 944 and deposit accordingly. 2. Input history items (via CC ACTON) to document that the taxpayer did not opt out and must file Form 944.

		3. Ensure all applicable deposits are applied to the 944 account. 4. Advise taxpayer that if they file a timely Form 944 and exceed the $1,000 annual threshold, they will be notified that they are required to file a Form 941 for the next year.
Taxpayer cites any other extenuating circumstances		Refer to your manager/lead for approval.

Reminder: Always research the "Form 944 Cache" when addressing taxpayer contacts regarding Form 944 filing requirements. See IRM 21.7.2.4.9.1, *Form 944 Cache*, for more information on researching the "Form 944 Cache" and changing filing requirements to and from Form 944.

Note: If the unpostable/rejected DLN of the Form 941 is not available on IDRS, the Letter 4148C contains the DLN of the unprocessed return and can be used to request the return from Files. If you secure the originally filed return from Files and are forwarding to be processed as the original, cross out the DLN and make sure the received date is on the return.

Reminder: Only the taxpayer or their authorized representatives may "opt out" of the Form 944 program. Chief Counsel has determined that Reporting Agents are not permitted to "opt out" of the program on behalf of their clients. **Do not** change filing requirements based on a request from an RA **unless** the RA also has a valid Power of Attorney (POA) (i.e., Form 2848) either on file or that can be faxed to us. Third-Party PIN designees are also **not** authorized to "opt out" of the Form 944 program for the taxpayer.

Reminder: If the taxpayer's filing requirement is changed based on a 4148C reply, be sure to secure any missing returns (not already filed) that need to be filed. If the taxpayer has missing Forms 941, secure the returns, preferably by fax. Once returns are received, forward for processing with the actual received date.

(6) **Letter 4086C** responses are not common. And, the letter will generally only be issued after the close of the tax year when it is too late to opt in to the Form 944 program. If a taxpayer responds to a 4086c and states they wish to file Form 944 instead of Form 941 for the tax year in question, **do not** change the filing requirement to Form 944 **unless** the taxpayer provides a copy of a written notification from the IRS (i.e., Letter 3007C) instructing the taxpayer to file Form 944 for that tax year or there is clear documentation in the IRS records that a timely request to opt-in was made but failed to be properly acted upon by the IRS.

Exception: See (8) below if the entity reflects a TC 000 with a transaction date in the range of January 1, 2015 through September 19, 2016.

(7) **Letter 3007C** responses are usually received by the IRS as documentation from the taxpayer to support their position with regards to filing requirements. Procedures for those cases are found throughout subsections of IRM 21.7.2.4.9, **Form 944 ANNUAL Federal Tax Return**. However, if the taxpayer is disputing the content of a 3007C letter, contact the IRM author through the campus P&A Staff for guidance on resolving the case.

Exception: See (8) below if the entity reflects a TC 000 with a transaction date in the range of January 1, 2015 through September 19, 2016.

(8) From January 1, 2015 through September 19, 2016, a programming error existed which caused Form 944 Cache values to be incorrectly set for new business entities self-identifying as Form 944 filers during EIN assignment. Instead of setting a Cache value of "1" for the year in which the taxpayer stated they would first have wages, the computer left that year as a "blank" value in the Cache and incorrectly set a Form 944 Cache value of "1" for the **following** year (e.g., an EIN assigned to a taxpayer opting in for filing Form 944 in 2015 would have incorrectly reflected a "blank" Cache value for 2015 and a Cache value of "1" for 2016). As a result of this error, the initial Form 944 returns filed by many taxpayers have (or will), at least initially, gone unpostable. And, taxpayers who opted to file Forms 944 for their initial year but instead incorrectly filed Form 941 returns had those returns accepted as filed (instead of being rejected) due to the Cache value being "blank" instead of a "1". Many of the incorrect filing situations created by this programming error have been, or will be, resolved by routine operation of the IAT tool described in (2), (3) and (4) above. However, due to obstacles in systemically identifying all impacted taxpayers, some account situations will only be able to be addressed in the event that an impacted taxpayer contacts us after receiving a Letter 4148C, Letter 4086C, or Letter 3007C generated by the IAT tool. Accordingly, if you receive an inquiry concerning either a Letter 4148C, Letter 4086C, or Letter 3007C **and** there is a TC 000 posted to the entity with a transaction date in the range of January 1, 2015 through September 19, 2016, follow the procedures below:

If	And	Then
The taxpayer received a Letter 4086C instructing them to file Form 941 returns for 2015	States they requested to file Form 944 for 2015 when they applied for their EIN	Allow the taxpayer to file Form 944 for 2015. 1. Request the originally filed return from Files using the DLN (Document Locator Number) of the unpostable/rejected TC 150. If you are not able to secure the originally filed return, request a signed copy of the originally filed Form 944 from the taxpayer, via fax. 2. Change the filing requirement for 2015 to Form 944.

		3. Send Letter 3007C to confirm filing requirement change, even if resulting from a phone call. 4. Transfer all applicable deposits to the Form 944 account. 5. Send Form 944, secured from Files, for processing as the original. (If you are unable to secure the original return from Files and must use a faxed return, edit the received date on faxed forms to reflect a timely filed return.) **Exception:** If you are staffing the toll-free telephone lines at a remote call site, do not follow steps 1-5 above; instead complete Form 4442/e-4442 and route to the Campus AM account paper function within your Directorate or designated campus except Puerto Rico who will send the Form 4442 to the Brookhaven Campus paper function until further notice. Include the DLN of the unpostable/Rejected TC 150 on the Form 4442.
The taxpayer received a Letter 4148C instructing them to file a Form 944 return for 2016	Filed Form(s) 941 for 2015 (or filed no employment tax returns for 2015) and wishes to file Form 941 for 2016	Allow the taxpayer to file Form 941 for 2016. 1. Request the originally filed return from Files using the DLN (Document Locator Number) of the unpostable/rejected TC 150. If you are not able to secure the originally filed return, request a signed copy of the originally filed Form 941 from the taxpayer, via fax. 2. Change the filing requirement for 2016 to Form 941. 3. Send Letter 3007C to confirm filing requirement change, even if resulting from a phone call. 4. Transfer all applicable deposits to the Form 941 account. 5. Send Form(s) 941, secured from Files, for processing as the original. (If you are unable to secure the original return from Files and must use a faxed return, edit the received

		date on faxed forms to reflect a timely filed return. **Exception:** If you are staffing the toll-free telephone lines at a remote call site, do not follow steps 1-5 above; instead complete Form 4442/e-4442 and route to the Campus AM account paper function within your Directorate or designated campus except Puerto Rico who will send the Form 4442 to the Brookhaven Campus paper function until further notice. Include the DLN of the unpostable/Rejected TC 150 on the Form 4442.
The taxpayer received a Letter 4086C instructing them to file Form 941 returns for 2016	States they requested to file Form 944 for 2016 when they applied for their EIN	Allow the taxpayer to file Form 944 for 2016. 1. Request the originally filed return from Files using the DLN (Document Locator Number) of the unpostable/rejected TC 150. If you are not able to secure the originally filed return, request a signed copy of the originally filed Form 944 from the taxpayer, via fax. 2. Change the filing requirement for 2016 to Form 944. 3. Send Letter 3007C to confirm filing requirement change, even if resulting from a phone call. 4. Transfer all applicable deposits to the Form 944 account. 5. Send Form 944, secured from Files, for processing as the original. (If you are unable to secure the original return from Files and must use a faxed return, edit the received date on faxed forms to reflect a timely filed return. **Exception:** If you are staffing the toll-free telephone lines at a remote call site, do not follow steps 1-5 above; instead complete Form 4442/e-4442 and route to the Campus AM account paper function within your Directorate or designated campus except Puerto Rico who will send the Form 4442 to the Brookhaven Campus paper function

		until further notice. Include the DLN of the unpostable/Rejected TC 150 on the Form 4442.
The taxpayer received a Letter 4148C instructing them to file a Form 944 return for 2017	Filed Form(s) 941 for 2016 (or filed no employment tax returns for 2016) and wishes to file Form 941 for 2017	Allow the taxpayer to file Form 941 for 2017. 1. Request the originally filed return from Files using the DLN (Document Locator Number) of the unpostable/rejected TC 150. If you are not able to secure the originally filed return, request a signed copy of the originally filed Form 941 from the taxpayer, via fax. 2. Change the filing requirement for 2017 to Form 941. 3. Send Letter 3007C to confirm filing requirement change, even if resulting from a phone call. 4. Transfer all applicable deposits to the Form 941 account. 5. Send Form(s) 941, secured from Files, for processing as the original. (If you are unable to secure the original return from Files and must use a faxed return, edit the received date on faxed forms to reflect a timely filed return. **Exception:** If you are staffing the toll-free telephone lines at a remote call site, do not follow steps 1-5 above; instead complete Form 4442/e-4442 and route to the Campus AM account paper function within your Directorate or designated campus except Puerto Rico who will send the Form 4442 to the Brookhaven Campus paper function until further notice. Include the DLN of the unpostable/rejected TC 150 on the Form 4442.
The taxpayer received Letter 3007C for 2015, 2016, or 2017	Disputes the filing instructions in the 3007C	Contact the IRM author through the campus P&A Staff for guidance on resolving the case.

Caution: The instructions in the table in (8) above are **only** to be followed if there is a TC 000 with transaction date in the range of January 1, 2015 through September 19, 2016.

Reminder: Always research the "Form 944 Cache" when addressing taxpayer contacts regarding Form 944 filing requirements. See IRM 21.7.2.4.9.1, *Form 944 Cache*, for more information on researching the "Form 944 Cache" and changing filing requirements to and from Form 944.

IRM 21.7.2.5.22(4) Updated case assignment number.

(4) **Processing of Form 5884-C and Form 5884-D is centralized in Accounts Management (AM) at the Ogden campus**. If you receive a Form 5884-C or Form 5884-D and are not part of the centralized team, route the claim as follows:

1. If you receive a paper case, route to:
   Internal Revenue Service
   1973 North Rulon White Blvd
   Ogden, UT 84404
   MS 6700
   Lead, Team B2-204
2. If you receive a case that has already been scanned into CII, reassign to the Ogden Campus IDRS number 0435646714 and notate on AMS/CII "Form 5884-C" or **Form 5884-D** as appropriate.