



# MANUAL TRANSMITTAL

Department of the Treasury  
Internal Revenue Service

4.10.5

MARCH 25, 2022

## EFFECTIVE DATE

(03-25-2022)

## PURPOSE

- (1) This transmits revised IRM 4.10.5, Examination of Returns, Required Filing Checks.

## MATERIAL CHANGES

- (1) Significant changes to this IRM are listed in the table below:

Prior IRM Reference	New IRM Reference	Description of Change
IRM 4.10.5.2.2, Internal Sources of Information	N/A	Added CKGE as an additional internal source of information.
4.10.5.2.4, Case File Documentation	N/A	Incorporated interim guidance memorandum content on the renumbering of the Multi-Year and Related Returns Lead Sheet.
IRM 4.10.5.4.1, Analysis of Related and Spin-Off Returns	N/A	Added guidance for making a referral to TE/GE if a related or spin-off return is a tax-exempt entity engaging in an abusive transaction.
IRM 4.10.5.5, Employment Tax Returns and Other Withholding Taxes		Added the common types of employment tax returns and forms.
IRM 4.10.5.8, Form 8300, Report of Cash Payments Over \$10,000 Received in a Trade or Business	N/A	Expanded content to clarify Field examiners can initiate and work certain Form 8300 examinations.

Prior IRM Reference	New IRM Reference	Description of Change
N/A	IRM 4.10.5.9, Title 31 Compliance	Moved information previously in IRM sections 4.10.5.8.2, Currency Transaction Reports (CTRs), and 4.10.5.9, Report of Foreign Bank and Financial Accounts (FBAR), to new IRM section on Title 31 compliance. Clarified information about Title 31 requirements.
IRM 4.10.5.13, Gift (and Generation-Skipping Transfer) Returns	IRM 4.10.5.12, Gift (and Generation-Skipping Transfer) Returns	Updated procedure for submitting a referral to the Estate and Gift Tax function.

- (2) Minor editorial changes have been made throughout this IRM. Website addresses, IRM references, terms, and acronyms were updated as necessary.

#### **EFFECT ON OTHER DOCUMENTS**

This IRM supersedes IRM 4.10.5, dated August 23, 2019. This IRM incorporates applicable content from SBSE-04-0921-0050, Reissue Interim Guidance for SB/SE Field Examination Administrative Lead Sheets, dated September 9, 2021.

#### **AUDIENCE**

SB/SE Field Examination, Specialty Examination and LB&I Employees.

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SE:S:DCE:E:HQ:EFCP

4.10.5

Required Filing Checks

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4.10.5.1  
(08-23-2019)  
**Program Scope and Objectives**

- (1) **Purpose.** This IRM section describes basic responsibilities related to required filing checks, which are necessary to ensure voluntary compliance. Examiners should determine that taxpayers are in compliance with all federal tax and information return filing requirements (IRM 1.2.1.5.2, Policy Statement 4-4), and that all returns reflect the substantially correct tax. Returns include the taxpayer's returns, all related returns that impact the taxpayer's returns and any return the taxpayer is responsible for filing or can control.
- (2) **Audience.** These procedures apply to Small Business and Self-Employed (SB/SE) Field Examination, SB/SE Specialty Examination, and Large Business and International (LB&I) employees. In addition to the procedures in this IRM, the following examiners should refer to the listed IRMs:
  - SB/SE employment tax examiners—IRM 4.23.3.6.3, Procedures for Required Filing Checks, Scope, and Controls of Employment Tax Examinations; and IRM 4.23.3.6.3.1, Required Filing Checks.
  - SB/SE estate and gift tax examiners—IRM 4.25.1.2.4, Required Filing Checks.
  - SB/SE excise tax examiners—IRM 4.24.25.5.8, B200-1 - Required Filing Checks Prior/Subsequent Period Returns, Related Excise Tax Returns, Filing Verification.
  - LB&I examiners—IRM 4.46.3, Planning the Examination. LB&I refers to required filing checks as required compliance checks. IRM Exhibit 4.46.3-5, Compliance Checks Tool, outlines the compliance checks that are required, may be waived, or are not required for LB&I examiners.
- (3) **Policy Owner.** The Director, Examination Field and Campus Policy, who is under the Director, Examination Headquarters, owns the policy in this IRM.
- (4) **Program Owner.** Field Examination General Processes, which is under the Director, Examination Field and Campus Policy.
- (5) **Contact Information.** To recommend changes or make any other suggestions related to this IRM section, see IRM 1.11.6.6, Providing Feedback About an IRM Section - Outside of Clearance.

4.10.5.1.1  
(08-23-2019)  
**Background**

- (1) This IRM provides the responsibilities that examiners should understand and apply in the performance of required filing checks.

4.10.5.1.2  
(08-23-2019)  
**Responsibilities**

- (1) The Director, Examination Headquarters, is the executive responsible for providing policy and guidance for Field, Speciality, and Campus examination operations and ensuring consistent application of policy, procedures and tax law to effect tax administration while protecting taxpayers' rights. See IRM 1.1.16.5.5, Examination Headquarters, for additional information.
- (2) The Director, Examination Field and Campus Policy, reports to the Director, Examination Headquarters, and is responsible for the delivery of policy and guidance that impacts the field examination process. See IRM 1.1.16.5.5.1, Examination Field and Campus Policy, for additional information.
- (3) Field Examination General Processes, which is under the Director, Examination Field and Campus Policy, is the group responsible for providing policy and procedural guidance on standard examination processes to field employees. See IRM 1.1.16.5.5.1.1, Field Examination General Processes, for additional information.

- (4) All examiners must perform their professional responsibilities in a way that supports the IRS Mission. This requires examiners to provide top quality service and to apply the law with integrity and fairness to all.
- (5) Examiners and their managers and clerical support staff should thoroughly acquaint themselves with the procedures and information contained in this IRM.

4.10.5.1.3  
(08-23-2019)

#### **Program Reports**

- (1) Periodic program reviews are conducted to:
  - Assess the effectiveness of specific programs within Examination or across the organization,
  - Determine if procedures are being followed,
  - Validate policies and procedures, and
  - Identify and share best/proven practices.

4.10.5.1.4  
(03-25-2022)

#### **Acronyms**

- (1) The following table lists acronyms and their definitions used throughout this IRM.

Acronym	Definition
ACA	Affordable Care Act
ALE	Applicable Large Employer
BSA	Bank Secrecy Act
CBF	Case Built File
CDE	Compliance Data Environment
CFOL	Corporate Files On Line
CTR	Currency Transaction Report
ECS	Examination Case Selection
EP	Employee Plans
ERCS	Examination Returns Control System
ESRP	Employer Shared Responsibility Payment
ET WSD	Employment Tax Workload Selection and Delivery
EUP	Employee User Portal
FBAR	Foreign Bank and Financial Accounts
FCQ	FinCEN Query
FICA	Federal Insurance Contribution Act
FinCEN	Financial Crimes Enforcement Network
FEA	Fraud Enforcement Advisor
FUTA	Federal Unemployment Tax Act
IDRS	Integrated Data Retrieval System

Acronym	Definition
IRP URP	Information Returns Processing Underreporter Program
LLC	Limited Liability Company
LUQ	Large, Unusual, or Questionable
MEC	Minimum Essential Coverage
MeF	Modernized e-File
MFT	Master File Tax
PMF	Payor Master File
PSP	Planning and Special Programs
RRTA	Railroad Retirement Tax Act
SAIN	Standard Audit Index Number
SEP	Special Enforcement Program
SFR	Substitute For Return
SRP	Shared Responsibility Payment
SRS	Specialist Referral System

4.10.5.1.5  
(08-23-2019)

- (1) The following table lists commonly used terms and their definitions used throughout this IRM.

#### Terms

Term	Definition
Area of Expertise	Area of tax in which examiners have been formally trained.
Backup Withholding	Income tax withheld on reportable payments of interest, dividends, or other payments.
Examiner	Revenue agents and tax compliance officers/tax auditors located in one of the seven SB/SE Field Examination areas, SB/SE Speciality, or LB&I, who conduct field examinations of income or speciality tax returns filed by individuals, small businesses, and other entities to ensure compliance with Federal tax laws.
Group Manager	A first level supervisor responsible for assigning, directing, and reviewing the work of subordinate employees; planning, scheduling, and coordinating work operations; planning and carrying out the training and development of employees; evaluating employees' work performance; and performing all other related administrative functions.
Information Returns	Returns that may be a statement, return, form or schedule as described in IRC 6724(d)(1).

Term	Definition
Related Returns	Any return the taxpayer is responsible for filing or can control and returns that: <ul style="list-style-type: none"> <li>• have a relationship to the return under examination</li> <li>• impact the taxpayer's return</li> </ul>
Spin-Off Returns	Returns that do not have a direct relationship to the return under examination but are identified during the examination (e.g., relatives, employees, employers, subcontractors, etc.).

4.10.5.1.6  
(08-23-2019)

#### Related Resources

- (1) The *Required Filing Checks Knowledge Management* page contains a variety of job aids.
- (2) The IRMs in Part 4, Chapter 10 (see table below) contain many of the procedures and guidelines examiners will use related to required filing checks.

IRM	Title	Guidance for
IRM 4.10.2	Pre-Contact Responsibilities	Completing required responsibilities and analyses before an examination is initiated, pre-contact planning of the examination, and instructions for contacting taxpayers.
IRM 4.10.3	Examination Techniques	Using appropriate procedures and techniques to conduct an effective examination.
IRM 4.10.4	Examination of Income	Examining income, including the minimum income probe requirements for all types of returns, in-depth examination techniques, and formal indirect methods.
IRM 4.10.6	Penalty Considerations	Recognizing, developing and finalizing penalty determinations; discusses common taxpayer defenses, and furnishes guidelines for documenting the workpapers.
IRM 4.10.9	Workpaper System and Case File Assembly	Developing lead sheet and workpaper content and workpaper and case file organization. These guidelines are provided to promote quality and consistency in the preparation and completion of lead sheets, workpapers, and case files.



IRM	Title	Guidance for
IRM 4.10.13	Certain Technical Issues	Examining technical issues, specifically IRM 4.10.13.6, Activities Not Engaged in For Profit - Hobby Loss (IRC 183), which is referenced in this IRM.

- (3) In addition to the list in the table above, there are other relevant IRMs examiners will use, including, but not limited to:

- IRM 4.4, AIMS Procedures and Processing Instructions
- IRM 4.12.1, Nonfiled Returns
- IRM 4.23, Employment Tax
- IRM 4.24, Excise Tax
- IRM 4.25, Estate and Gift Tax
- IRM 4.26, Bank Secrecy Act
- IRM 4.46, LB&I Examination Process
- IRM 25.6, Statute of Limitations

4.10.5.2  
(06-13-2017)  
**General Guidelines**

- (1) Required filing checks consist of an analysis of return information and, when warranted, expansion of the audit to include additional returns.
- (2) The analysis and pickup of prior, subsequent, and related returns, when warranted, is a primary responsibility of examiners in every audit. This analysis is designed to answer two primary questions:
- Has the taxpayer under audit filed all required returns?
  - Do any of the returns controlled by the taxpayer warrant audit?
- (3) Proper required filing checks impact compliance by providing coverage greater than the single tax year under audit. By ensuring that the taxpayer under audit has complied with all filing requirements and identifying potential noncompliance on prior, subsequent and related returns, the required filing checks increase the overall compliance coverage of every examination.
- (4) The inspection of a return is not an examination. It is essentially the same as classifying a return for audit potential. No records should be examined as part of this process. The examiner may question the taxpayer concerning items on the return in an attempt to understand how or why they occurred (see *Patterson v. C.I.R.*, T.C. Memo. 1984-58, Rev. Proc. 2005-32, and *Benjamin v. Commissioner*, 66 T.C. 1084, 1097).

**Example:** The examiner asks the taxpayer why the gross income decreased in the subsequent year from the year under audit. The taxpayer states that he lost two key clients. There were no other large, unusual or questionable items on the return, and the examiner accepted 'the taxpayer's explanation without looking at any records. The examiner's question does not constitute an examination and the examiner should advise the taxpayer that the audit is not being expanded to the subsequent year.

**Caution:** When inspecting returns or asking questions, examiners should not request **records** to verify or substantiate items on the return being inspected as this may constitute an examination. There are only limited

circumstances when records for prior or subsequent years can be requested without constituting an examination. This would be situations in which the records requested for the prior or subsequent years are relevant to an issue being considered in the audit of the primary year (e.g., carryforwards, carrybacks, verification of asset basis acquired in prior year, etc.).

4.10.5.2.1  
(06-01-2010)  
**Filing Verification**

- (1) Examiners must verify that all returns within the taxpayer's sphere of influence are filed. To decrease taxpayer burden, examiners should use internal sources of information (see IRM 4.10.5.2.2, Internal Sources of Information) to complete required filing checks. Returns include, but are not limited to:

- Prior and subsequent year returns.
- Related income tax returns.
- Information returns (e.g., Form 1099, Form 926, Form 1095-B, etc.).
- Employment tax returns.
- Gift tax returns.
- Excise tax returns.
- Pension plan returns.

4.10.5.2.2  
(03-25-2022)  
**Internal Sources of Information**

- (1) Internal sources can be used to determine the taxpayer's compliance with filing requirements. Refer to the *Internal Sources of Information* website article, for additional information. Examples of internal sources of information include:

- Compliance Data Environment (CDE). See IRM 4.103.1, CDE Application and Procedures.
- Corporate Files On Line (CFOL). See IRM 3.13.5.101, Overview Corporate Files On-Line (CFOL) Command Codes.
- Integrated Data Retrieval System (IDRS). See IRM 2.3.1, Section Titles and Command Codes for IDRS Terminal Responses.

**Note:** Additional IDRS commands are listed in IRM Exhibit 4.10.4-2, Internal Sources of Information.

- Modernized e-File (MeF). See IRM 21.2.1.22, Modernized e-File (MeF/ TRDB).
- yK1. See the *yK1 Link Analysis Tool* website article.
- CDW Knowledge Graph Environment (CKGE). See the *CDW Knowledge Graph Environment (CKGE)* website.
- Case Built File (CBF) Information (LB&I only). See IRM 4.46.3.2.4(1)(c), Planning - Return Assignment.

**Note:** Some of these sources (e.g., MeF, CDE, etc.) are available through the Employee User Portal (EUP). See IRM 2.25.2.2(4), Portal Definitions, for more information.

- (2) After analysis of internal sources of information, if additional return information is needed, the return should be requested from either the taxpayer or the Campus for inspection.

**Caution:** UNAX WARNING: Access to and inspection of paper and electronic taxpayer records are only allowed when the information is needed to carry out assigned tax administration duties as set forth in IRC 7213A. Specifically, service employees may access taxpayer information only when there is a "need to know" the information for their tax administration

duties. Additionally, employees are not allowed to access taxpayer records when their involvement in a tax matter could cause a possible financial conflict of interest, or when they have a personal relationship or an outside business relationship that could raise questions about their impartiality in handling the tax matter. See Document 10281, Safeguarding Taxpayer Records Renewing Our Commitment - UNAX Employee Booklet, for additional guidance.

4.10.5.2.3  
(06-01-2010)  
**Assessing Audit  
Potential: Area of  
Expertise**

- (1) Examiners are responsible for assessing the audit potential of all returns within their area of expertise. Area of expertise is the area of tax in which examiners have been formally trained. If it is determined that additional returns require audit, examiners are responsible for expanding the audit to include those returns, unless otherwise instructed by management. Discussions with management must be documented. See IRM 4.10.5.2.4, Case File Documentation. Examiners should verify that returns are not currently under examination before opening them as part of their audit.
- (2) For returns outside the examiner's area of expertise, examiners should verify filing and discuss with their manager to determine audit potential. If audit potential exists, examiners should ensure these issues are examined by a specialist or with specialist assistance. Returns may be referred to a specialist using the *Specialist Referral System* (SRS) or by preparing a manual referral. See IRM 4.10.2.7.5.1, Specialist Referral System (SRS) - Online Referrals, and IRM 4.10.2.7.5.2, Referrals Made Outside of SRS, for guidance on which process **must** be used. Additionally, see IRM 4.10.5.14, Form 5346, Examination Information Report, for guidance regarding use of Form 5346.

4.10.5.2.4  
(03-25-2022)  
**Case File  
Documentation**

- (1) Examiners are required to document the facts, procedures, audit techniques used, management involvement, and conclusions reached in the completion of the required filing checks. This documentation must include:
  - Actions taken to verify that all required returns (e.g., prior and subsequent, related, information, etc.) were filed including the internal sources of information (e.g., IMFOLI/BMFOLI, etc.) reviewed for each return.  
**Note:** Secured internal documents do not need to be included in the case file; however, the sources of information (e.g., IMFOLI/BMFOLI, etc.) reviewed and the conclusion of the review must be documented in the case file.
  - Analysis completed (e.g., comparative analysis, related transactions, etc.) to evaluate audit potential of prior, subsequent and related returns.
  - A narrative reflecting the conclusion reached as to whether or not to expand the examination to the prior, subsequent and related returns.
- (2) Examiners' written narrative must include an explanation if the audit is not expanded when:
  - Adjustment(s) are proposed in the initial year,
  - Large, unusual, or questionable items are identified in the prior, subsequent or related returns (including related transactions), or
  - Delinquent return is not secured and a substitute for return (SFR) is not filed for a specific reason identified in IRM 4.12.1, Nonfiled Returns.

**Note:** See IRM 4.12.1.10.6, No Return Secured - Refund Years; IRM 4.12.1.10.7, No Return Secured - No Filing Requirement/Little or No Tax Due; IRM 4.12.1.10.8, No Return Secured - Year(s) Outside Enforcement Period.

**Example:** The explanation must include factors considered when not expanding the exam.

Reason Not Expanded	Documentation includes	Reference and Additional Information
No material tax change	An explanation why there would not be a material tax change.	IRM 4.10.2.3.1(2), Large Unusual or Questionable (LUQ) Items Defined
26/27 month examination cycle	<p>The date when the 26/27 month examination cycle ends and why circumstances do not warrant exceeding the examination cycle.</p> <p><b>Reminder:</b> The examination cycle should be determined early in the audit as all years should be worked concurrently (IRM 4.10.5.3.2).</p>	IRM 4.10.2.2.2, 26/27 Month Examination Cycle
Short statute date	<p>The statute date and consideration of requesting a statute extension.</p> <p><b>Reminder:</b> The statute date for all open years should be determined at the beginning of the audit to allow the years to be audited concurrently, if warranted (IRM 4.10.5.3.2).</p>	IRM 4.10.2.2.1, Statute of Limitations (SOL), IRM 25.6.22.2, Guidelines for Soliciting Extensions, and Rev. Proc. 57-6, 1957-1 C.B. 729

Reason Not Expanded	Documentation includes	Reference and Additional Information
Expired statute date	<p>The statute date and when the date was determined.</p> <p><b>Reminder:</b> This determination should be made at the beginning of the audit in the event the statute is still open.</p> <p><b>Example:</b> A six-year statute may be available based on a 25 percent omission of income under IRC 6501(e).</p>	IRM 25.6.1.2, What is a Statute of Limitation, and IRM 25.6.1.9.5.3, 25% Omission
Collectibility	The evaluation of the taxpayer's current financial condition and why that impacts expanding the examination.	IRM 4.10.2.4.1, Collectibility
Prior examination	That an examination was conducted, when it was completed and it doesn't warrant reopening.	IRM 1.2.1.5.1, Policy Statement 4-3, and Rev. Proc. 2005-32
Return on extension	The extension date of the return. If the examination is still open when the extension expires, document the review and audit potential of the filed return or secure a delinquent return.	IRM 4.10.5.3, Prior and Subsequent Returns

(3) Documentation of required filing checks is made as follows:

- a. SB/SE field examiners must use the mandatory administrative Lead Sheet 200, Multi-Year and Related Returns. Any supporting workpapers must be indexed to Lead Sheet 200. See IRM 4.10.9.6.1, Administrative Lead Sheets, and IRM 4.10.9.7, Workpapers.
- b. SB/SE employment tax examiners should refer to IRM 4.23.4.2.2, Workpaper Preparation: General, and IRM 4.23.4.3, Guide for Examiners Using ETLS - Employment Tax Lead Sheets, for documentation requirements and use of the Multi-Year and Related Returns Lead Sheet - Employment Tax.
- c. SB/SE estate and gift tax examiners use the return specific Mandatory Case Examination Lead Sheet to document required filing checks. See IRM 4.25.1.2.4, Required Filing Checks, for documentation requirements.
- d. SB/SE excise tax examiners should refer to IRM 4.24.25.5.8, B200-1 - Required Filing Checks Prior/Subsequent Period Returns, Related Excise Tax Returns, Filing Verification, for required check sheets.

- e. LB&I examiners should refer to IRM Exhibit 4.46.3-5, Compliance Checks Tool, and use the Standard Audit Index Numbering (SAIN) 713 mandatory compliance checks workpaper (IRM 4.46.6, Workpapers and Reports Resources). If an examiner waives a specific compliance check, the workpapers should document the reasoning and analysis used to support the conclusion reached.

- (4) Examiners must exercise caution when documenting consideration of related (e.g., shareholders, partners, etc.) and spin-off cases (e.g., relatives, employees, employers, subcontractors, return preparer penalty cases (see also IRM 4.10.9.7.10, Documenting Return Preparer Penalty Consideration)). The examiner should document what IDRS research was completed, but should not include the results of the research of the spin-off case in the taxpayer's case file since the information about the spin-off case should not be available to the taxpayer.

**Example:** Examiners should document that an information return was not filed for a subcontractor and that IDRS research was conducted on the subcontractor. To prevent disclosure of the subcontractor's information, examiners would not document in the taxpayer's file whether the subcontractor filed or reported the income from the taxpayer. See IRM 4.10.5.2.6, Returns Not Filed, and IRM 4.10.5.6, Information Returns.

4.10.5.2.5  
(06-13-2017)  
**Closing Prior,  
Subsequent and Related  
Return Cases**

- (1) Tax years are closed using the original return or an electronic print, such as TXMOD, IMFOL/BMFOL, RTVUE/BRTVU, CDE, TRDBV, TRPRT, or LIN (LB&I Imaging Network—LB&I only). A copy of a return is not required to close a prior, subsequent, or related tax return. If a copy of a return has been secured and examined, it must be properly identified as such and retained in the case file.
- (2) Original returns are generally required in certain cases (e.g., fraud, delinquent returns, and jeopardy assessments) closed to Appeals. See IRM 8.20.5.4.1.1, Non-Docketed Case Types Requiring an Original Return, for exceptions to requiring original returns.

**Note:** For electronically filed returns, a copy of the return must be included in the file using one of the internal sources available (e.g., TRPRT, RTVUE, MeF, etc.). See IRM 8.20.5.3.1.1(3), Contents of the Administrative File.

4.10.5.2.6  
(08-23-2019)  
**Returns Not Filed**

- (1) If examiners find that a return within the taxpayer's sphere of influence has not been filed, they should solicit the delinquent return, except when fraud or willful failure to file is indicated. Nonfilers must be brought current in their filing requirements following the guidelines in Policy Statement 5-133, Delinquent returns—enforcement of filing requirements. Refer to IRM 1.2.1.6.18, Policy Statement 5-133.

**Caution:** If there is an indication that the failure to file was willful, or if there is any other indication of fraud, the return should not be solicited. Examiners must discuss the indicators of fraud with the group manager. If it is agreed that the case has fraud potential, examiners must contact the Fraud Enforcement Advisor (FEA) for their geographical area. See IRM 25.1.2.4(2), Investigative Techniques, and IRM 25.1.7, Failure to File.

**Note:** A return may be posted to Master File Tax (MFT) 32 (use CC IMFOLI and TRDBV). MFT 32 is used to post suspicious returns that may be identity theft returns. If the taxpayer verifies the return is valid, the return is moved to MFT 30 and processed normally. This action may occur before the return is selected for audit or the examiner may need to take action to correct the taxpayer's account. If the return received date on the MFT 30 transcript indicates a late filing, verify that the statute date is based on the date the original return (MFT 32) was received by the IRS and not when the return was moved to MFT 30. See IRM 25.25.6, Taxpayer Protection Program, for additional information on MFT 32. Contact the *Area PSP Identity Theft Coordinator* for assistance.

- (2) Examiners should be alert to nonfiled related (e.g., shareholders, partners, etc.) and spin-off returns (e.g., relatives, employees, employers, subcontractors, return preparers/ representatives, etc.). Examples include:
  - If the taxpayer is involved in a family business, determine if family members engaged in the operation or ownership of the business have filed returns.
  - If the taxpayer is involved in a partnership, determine if partnership returns have been filed and if key partners have filed returns. For the purpose of this section, key partners are those partners that can control or influence the operation of the business.
  - If the taxpayer has employees and/or subcontractors (e.g., return preparer, lawyer, etc.), determine if required information returns have been filed (e.g., Form W-2 or Form 1099) and if not, verify whether the employees and/or subcontractors have filed. See IRM 4.10.5.6, Information Returns, for information on verifying non-employee payments.
  - If the taxpayer is a corporation, determine if key shareholders have filed returns. For the purpose of this section, key shareholders are those shareholders that can control or influence the operation of the business.
- (3) All secured delinquent returns must be reviewed for audit potential. If the return is outside the examiner's area of expertise, examiners should discuss the return with their manager to determine audit potential. If audit potential exists, examiners should ensure the issues are examined by a specialist, worked with specialist assistance, or referred to the appropriate function.
- (4) If the taxpayer is uncooperative and does not provide the examiner with the delinquent return(s), examiners must consider SFR procedures, with managerial approval. Refer to IRM 4.10.5.4, Related and Spin-Off Returns, for additional information on these returns and to IRM 4.4.9, Delinquent and Substitute for Return Processing, for substitute for return (SFR) and delinquent return procedures. Also see IRM 4.12.1, Nonfiled Returns, for SFR, delinquent return, and refund return procedures.
- (5) Managerial approval is required prior to opening an examination on any related or spin-off case. If an examination appears warranted and is not initiated (e.g., taxpayer resides outside of the examiner's area, return is outside examiner's area of expertise, etc.), an information report is appropriate. Form 5346 should be prepared, submitted to the group manager for approval, and if approved, forwarded to Planning and Special Programs (PSP). See IRM 4.10.5.14, Form 5346, Examination Information Report, for further guidance.



- (6) Examiners must document their actions and conclusions. If the examiner determines that there is no filing requirement, this must be documented in the case file. See IRM 4.10.5.2.4, Case File Documentation.
- (7) See IRM 4.12.1, Nonfiled Returns, for additional guidance.

4.10.5.3  
(06-13-2017)  
**Prior and Subsequent  
Returns**

- (1) Required filing checks must be completed for:
  - a. All subsequent year returns that are filed or due before the audit is closed from the group.  
  
**Reminder:** If a case is returned to the group, the examiner must ensure the taxpayer is in compliance with any new filing requirements before closing the case again.
  - b. All prior year returns that have open statutes, including those not filed. In addition, if the immediate prior year tax return's statute is closed, it still needs to be reviewed as part of the comparative analysis.

**Reminder:** When auditing an individual, S Corporation, partnership, trust or estate, if the required filing checks indicate the taxpayer is engaged in an activity with a pattern of losses and potential lack of profit motive, examiners must consider IRC 183, Activities Not Engaged in for Profit. IRC 183 provides the taxpayer with a rebuttable presumption that an activity is a business and not a hobby, if profit results from the activity in three out of five (two out of seven in the case of horse breeding, training or racing) consecutive years. In these circumstances, examiners should expand their review to cover the five or seven year presumptive period. See IRM 4.10.13.6, Activities Not Engaged in For Profit - Hobby Loss (IRC 183). Examiners must document their actions in the case file. See IRM 4.10.5.2.4, Case File Documentation.

- (2) See IRM 4.10.5.2.6, Returns Not Filed, for information on delinquent returns.

4.10.5.3.1  
(08-23-2019)  
**Analysis of Prior and  
Subsequent Returns**

- (1) Examiners must complete a comparative analysis using prior and subsequent years to evaluate the audit potential of the year under examination as well as years where the statute of limitations has not expired. The comparative analysis aids in identifying:
  - Large, unusual, and questionable (LUQ) items (e.g., income, expense, or credit items)
  - A pattern of noncompliance (e.g., high car and truck expenses, passive activity losses, or potential IRC 183 issue)
  - Missing schedules (e.g., Schedule E missing in a subsequent year and no sale of rental property reported)
  - Inconsistencies between different years (e.g., cost of goods sold is a higher percentage of gross income than in other years)
- (2) Examiners should use their professional judgement to determine which technique, or combination of techniques, provides a complete analysis and aids in evaluating the returns. Examiners can:
  - Review a CDE print, if available.

**Note:** A CDE print alone is generally not adequate for a comparative analysis if the print does not cover the prior and subsequent



years as well as all years where the statute of limitations has not expired or if the return contains material non-transcribed items (e.g., Schedule E, Schedule C “Other Expenses”, etc.).

- Review transcripts and other internal sources of information (e.g., RTVUE, BRTVU, TRDBV, MeF).

**Note:** See IRM 4.10.5.2.2, Internal Sources of Information, and the *Internal Sources of Information* website article, for information on the research tools available.

- Request and review tax returns (e.g., taxpayer’s retained copies or requisitioned original returns).

**Note:** Examiners should only request returns from the taxpayer if internal sources of information do not provide enough detail and should only requisition an original return from files if the taxpayer does not provide a copy of it when asked.

- (3) When completing the analysis, examiners must document actions taken and conclusions reached, whether the analysis is completed by reviewing or preparing documents. When additional tax years are filed, the returns need to be evaluated for audit potential. Examiners should use their professional judgement to determine if the additional years need to be added to the comparative analysis.

- The actions taken must include what items were evaluated and should address any line items that significantly changed between years.
- Examiners may document the analysis completed on the CDE print or transcript (e.g. check marks, circling numbers, conclusion reached, etc.) or may prepare an additional supporting workpaper (e.g., Excel workbook).

**Reminder:** Several workbook templates are available in Report Generation Software (RGS) to assist examiners.

**Note:** For business returns, also see IRM 4.10.4.3.3.8, Business Ratio Analyses (Individual Business Returns), and IRM 4.10.4.3.4.8, Business Ratio Analyses (Corporations and Other Business Returns).

- All analyses must be retained in the case file.
- Examiners must comment on prior and subsequent years. See IRM 4.10.5.2.4, Case File Documentation, for additional information.

4.10.5.3.2  
(08-23-2019)  
**Examination of Prior and Subsequent Returns**

- (1) If the examination of a prior or subsequent year return(s) is warranted, the return(s) will be audited **concurrently** with the assigned return. Examiners must consider the 26/27 month examination cycle before picking up prior or subsequent year returns for audit. See IRM 4.10.2.2.2, 26/27 Month Examination Cycle.
- (2) Examiners must use IDRS (e.g., command codes IMFOL/BMFOL, TXMOD, AMDISA, etc.) to determine if the return is currently under examination or has been selected for audit. If the research reveals the return is:
  - a. Not under examination, AIMS control must be established using Form 5345-D, Examination Request - ERCS (Examination Returns Control

System) Users. See IRM 4.4.16.2, Preparation and Use of Form 5345-B or Form 5345-D. The Form 5345-D must be included in the case file. If the case file is split, a copy of the Form 5345-D should be in the primary case file and the original included with the year of the request.

- b. Under examination, examiners must discuss the case with the group manager. If it is determined that the case should be transferred, refer to IRM 4.11.29, Transfer of Returns Open for Examination, and IRM 4.10.2.12, Transfers of Returns Prior to the Initial Appointment.
- (3) Examiners must notify the taxpayer orally or in writing of the decision to audit the returns. For written notification, use Letter 5968, Prior or Subsequent Year Pickup. When expanding the examination, examiners determine the scope of the examination (IRM 4.10.2.7.1.2 (4), Determining the Scope of an Examination—Current, Prior and Subsequent Years) and must document their actions and conclusions (IRM 4.10.5.2.4, Case File Documentation).
- (4) If indicators of fraud are identified, examiners should follow the procedures in IRM 25.1.2, Recognizing and Developing Fraud.
- (5) If an issue concerning a return not yet due to be filed is identified, Form 5346 must be prepared, submitted to the group manager for approval, and if approved, forwarded to PSP. See IRM 4.10.5.14, Form 5346, Examination Information Report, for additional information.

**Example:** The taxpayer's 2020 income tax return was audited and the net operating loss was reduced from \$500,000 to \$440,000. The taxpayer carried back the net operating loss to the prior five years and had an unabsorbed loss available for carry forward totaling \$100,000. Since the audit adjustments reduced the net operating loss carry forward from \$100,000 to \$40,000 and the 2021 income tax return was not yet due to be filed, the examiner must prepare Form 5346 to reflect the changes to the net operating loss carry forward.

#### 4.10.5.4 (06-01-2010)

#### **Related and Spin-Off Returns**

- (1) During the audit of the primary return, examiners should identify related returns (e.g., corporate, partnership, individual, employment tax, and excise tax returns). Related returns are returns that have a relationship to the return under examination. Returns are considered related if:
  - a. Adjustments made to one return require corresponding adjustments to the other return to ensure consistent treatment (refer to IRC 1313(c) and IRC 267), or
  - b. Entities over which the taxpayer has control can be manipulated to divert funds or camouflage financial transactions (refer to IRC 267(b)). See IRM Exhibit 4.10.4-8, Tax Treatment of Diverted Income, if funds diverted from a corporation to a stockholder are identified.
- (2) During the audit of the primary return, examiners may identify spin-off returns (e.g., relatives, employees, employers, subcontractors, etc.) that warrant further review. These returns do not have a direct relationship to the return under examination. Examples of spin-off returns to consider include:
  - Family members engaged in the operation or ownership of a family business.
  - Employees who received benefits that were not included in wages (e.g., bonuses, awards, gifts, travel allowances, etc.).

- Employer who treated the taxpayer as a subcontractor rather than an employee.
- Subcontractor who did not report income received from the taxpayer.

4.10.5.4.1  
(03-25-2022)

**Analysis of Related and Spin-Off Returns**

- (1) To identify and analyze related and spin-off returns and obtain information about them, examiners:
  - a. Can use internal sources of information to obtain information for known related and spin-off returns that were filed. See IRM 4.10.5.2.2, Internal Sources of Information, and the *Internal Sources of Information* website article and use command codes TRDBV, RTVUE, or BRTVU and the yK1 Link Analysis Tool.
  - b. Can use external asset locator/people locator tools to determine related businesses, asset ownership, and real estate. Visit the SPDER *ReferenceNet* research website to determine the current electronic asset locator/people locator tools available (e.g., Accurant).
  - c. Should ask about the taxpayer's involvement with partnerships, limited liability companies (LLCs), trusts, corporations, and related family transactions.
  - d. Must determine whether transactions between related parties are correctly accounted for on all impacted returns. Correct reporting of flow-through items should be observed, whipsaw issues checked, and proper reporting of related transactions verified. For example, alimony versus child support, loans or dividends from a corporation to a shareholder, and character and limitation of K-1 items from flow-through entities (e.g., partnerships, S-Corporation, etc.).
  - e. Must evaluate large, unusual, and questionable items, such as income, expense, or credit items, for audit potential, independent of the entity under examination.
  - f. Should determine, from a classification perspective, whether the return warrants examination.
  - g. Should ask questions to probe for possible participation in domestic and offshore abusive tax schemes and listed transactions. If a listed transaction surfaces during an audit, examiners should contact the Technical Advisor/Issue Specialist. For additional information see IRM 4.32.1.4.3, Coordination of Listed Transactions.
- (2) Examiners should discuss the related or spin-off return with the group manager if:
  - a. A new or unique abusive promotion or transaction is identified during an audit. An Abusive Transaction Advisor should be included in the discussion. See IRM 4.34.1.2, Identification of Emerging Issues.
  - b. Indicators of fraud are identified. See IRM 25.1.2, Recognizing and Developing Fraud, for additional procedures concerning fraud development.
  - c. The return involves a tax-exempt entity engaging in what appears to be a prohibited tax shelter transaction (i.e., listed transaction, confidential transaction, or transaction with contractual protection). If applicable, the manager should ensure the return is referred to TE/GE on Form 5666, TE/GE Referral Information Report. See IRM 4.32.3.8.1.3, Information Sharing, for information on how to prepare the referral.

4.10.5.4.2  
(08-23-2019)  
**Examination of Related  
and Spin-Off Returns**

- (1) If a related or spin-off return has audit potential, the examination should be expanded to include the return(s) and the related or spin-off taxpayer should be notified of the audit. See IRM 4.10.2.8, Initial Contact: Overview. AIMS control must be established using Form 5345-D, Examination Request - ERCS (Examination Returns Control System) Users. See IRM 4.4.16.2, Preparation and Use of Form 5345-B or Form 5345-D. The Form 5345-D must be included in the case file of the related or spin-off return.

**Note:** The required filing checks for the partner's or shareholder's return may be limited to the consideration of the prior and subsequent year returns if the scope of their examination is limited to a flow-through adjustment.

- (2) If a return has a filing requirement and has not been filed, see IRM 4.10.5.2.6, Returns Not Filed.
- (3) If a material issue concerning a return not yet due to be filed is identified, Form 5346 should be prepared, submitted to the group manager for approval, and if approved, forwarded to PSP. See IRM 4.10.5.14, Form 5346, Examination Information Report, for additional information.

4.10.5.5  
(03-25-2022)  
**Employment Tax  
Returns and Other  
Withholding Taxes**

- (1) Employment tax returns of a business taxpayer will be considered for examination **at the same time** the income tax return is audited. See IRM 1.2.1.5.2, Policy Statement 4-4.
- (2) Employment and other withholding taxes include taxes such as:
  - a. Federal Insurance Contribution Act (FICA)
  - b. Federal Unemployment Tax (FUTA)
  - c. Railroad Retirement Tax (RRTA)
  - d. Federal Income Tax Withholding
  - e. Back-up Withholding (IRM 4.23.8.13, IRC 3406 - Backup Withholding)
  - f. Withholding on gambling winnings (IRM 4.23.8.12, Withholding Tax on Certain Gambling Winnings)
  - g. Withholding on income paid to foreign persons (IRM 4.10.21, U.S. Withholding Agent Examinations - Form 1042)
- (3) Also included is the tax required to be withheld by the buyer or other transferee (withholding agent) when a foreign person disposes of a U.S. real property interest. Refer to IRC 1445.
- (4) Common employment tax returns and forms include:
  - Form 940, Employer's Annual Federal Unemployment (FUTA) Tax Return
  - Form 941, Employer's Quarterly Federal Tax Return
  - Form 943, Employer's Annual Tax Return for Agricultural Employees
  - Form 944, Employer's ANNUAL Federal Tax Return
  - Form 945, Annual Return of Withheld Federal Income Tax
  - Form 1040, U.S. Individual Income Tax Return *Schedule H*, Household Employment Taxes
  - *Form CT-1*, Employer's Annual Railroad Retirement Tax Return
  - *Form CT-2*, Employee Representative's Quarterly Railroad Tax Return
- (5) If a payer willfully fails to collect or pay over withholding taxes, examiners will refer the case to Collection for consideration of the Trust Fund Recovery Penalty, under IRC 6672 against the payer's responsible officer(s). Referral

procedures can be found in IRM 4.23.9.14, Trust Fund Recovery Penalty. See also IRM 20.1.10.8, IRC 6672 Failure to Collect and Pay Over Tax or Attempt to Evade or Defeat Tax.

- (6) The Withholding Compliance Program ensures that taxpayers who have serious under-withholding problems are brought into compliance with federal income tax withholding requirements. This process is based on W-2's filed and is the responsibility of the Withholding Compliance Unit. See IRM 5.19.11, Liability Collection, Withholding Compliance Program.

## 4.10.5.5.1 (06-01-2010) **Analysis of Employment Tax Returns**

- (1) Examiners should inspect internal sources of information for each employment tax return filed up to and including the last quarter for which an employment tax return was due. See IRM 4.10.5.2.2, Internal Sources of Information, and use the following command codes:
  - INOLE—provides filing requirements
  - BMFOLI—provides history of filing and nonfiling
  - BMFOLU—provides a summary of W-2s filed
  - IRPTRI—provides detail of each W-2 or 1099-MISC filed
  - BMFOLE—shows if the taxpayer has marked any returns as “final”
  - BRTVU, BMFOLR, BMFOLT, and TXMOD—provide return information for the Form 94X series of returns

## 4.10.5.5.2 (08-23-2019) **Examination of Employment Tax Returns**

- (1) Employment tax examinations should be conducted concurrently with the income tax audit. See Exhibit 4.10.5-1, Pro Forma Employment Tax Check Sheet.  
  
**Note:** Employment tax cases must be a separate case file (See IRM 4.10.9.9, Case File Assembly for Closing). Employment tax workpapers, reports, etc. must not be included in the electronic (i.e., RGS) income tax file. See IRM 4.10.15.9, Generic Workcenter, for guidance on saving an electronic employment tax case.
- (2) An employment tax audit is warranted if:
  - a. Available information indicates that the employment tax liabilities have not been correctly reported.
  - b. Delinquent returns are secured (IRM 4.23.12, Delinquent Return Procedures, and IRM 4.12.1, Nonfiled Returns).
  - c. The potential additional liability or the resulting improvement in voluntary compliance will justify the expenditure of time required to make necessary verification and adjustment.
- (3) IRM 4.23, Employment Tax, provides Servicewide instructions for all operating divisions with employees involved with the correct filing, reporting and payment of employment taxes. It provides guidance and procedures for employment tax issues and is the primary source of authority for the administration of employment tax audits. See also the *Employment Tax Knowledge Base* for the Employment Tax Examiner's Report application and user guide.
- (4) If the employment tax audit is outside the examiner's area of expertise, the examiner should refer the case to an Employment Tax Specialist using the *SRS*. See IRM 4.10.2.7.5, Referrals for Specialists. The referral should be made as early as possible in the income tax examination process to reduce

taxpayer burden and ensure that the employment tax audit is conducted concurrently with the income tax examination.

4.10.5.5.3  
(06-13-2017)  
**Worker Classification  
Issues**

- (1) If an employment tax audit is not initiated, the examiner should refrain from asking questions regarding the classification of a worker. These questions suggest that the examiner is conducting an audit on worker classification and could establish a safe haven available under section 530. See IRM 4.23.5.3, Section 530 of the Revenue Act of 1978. This does not preclude the examiner from asking general questions regarding deductions for contract labor, including the reason the contractor was engaged and the work performed. However, if general questions lead the examiner to believe a worker has been misclassified, then an employment tax audit should be initiated before asking additional questions.
- (2) If an employment tax audit involving worker classification is initiated by the examiner, the first step is to determine if the taxpayer qualifies for section 530 relief (Section 530 does not apply to issues other than worker classification). See IRM 4.23.5.3.1, Section 530 Relief. Pub 1976, Do You Qualify for Relief under Section 530?, must be provided to the taxpayer before initiating any worker classification examination.
  - a. If the taxpayer qualifies for relief, the examiner should terminate the employment tax audit with respect to the worker classification issue. However, it is important to remember that even if an employer is entitled to relief under section 530, workers determined to be employees are employees for other purposes of the Code. See IRM 4.23.5.3.4, Effect of Section 530 on Workers.
 

**Example:** The examiner must determine if the taxpayer has 50 full-time or full-time equivalent employees where the taxpayer would be an applicable large employer (ALE) under the Affordable Care Act (ACA). See IRM 4.10.5.13, Health Coverage Information Returns, for more information on the ACA.
  - b. If the taxpayer does not qualify for relief, the examiner must accurately determine the status of the worker as either an independent contractor or employee. See IRM 4.23.5.4, Independent Contractor or Employee.
- (3) In addition to section 530 considerations, there are other very specific procedures to follow in worker classification issues. Examiners should review IRM 4.23, Employment Tax, and Worker Classification Resources on the *Employment Tax Knowledge Base* to become familiar with these procedures or refer the case to an Employment Tax Specialist as described in IRM 4.10.5.5.2(4), Examination of Employment Tax Returns, if warranted.

4.10.5.6  
(06-01-2010)  
**Information Returns**

- (1) Internal Revenue Code sections, IRC 6039 through IRC 6056, and Title 31, United States Code, require that taxpayers report various types of payments to both the Service and the recipients of the payments. These payments include such items as rent, salaries, wages and income paid in the course of a trade or business, and payments such as dividends, interest, and royalties made to another person.
- (2) The term "information return" means any statement, return, form or schedule as described in IRC 6724(d)(1). While the most common information return is



the Form 1099, other information returns may be required related to education, health insurance, transfers of stock and retirement reporting.

- (3) When payers file information returns, these documents become important leads in identifying income for both taxpayers and the IRS. The Information Returns Processing Underreporter Program (IRP URP) matches information returns to individual tax returns to determine compliance. Therefore, it is important that taxpayers (payers) timely file these returns. Command code IRPTRR can be used to order a hardcopy payer transcript.
- (4) When auditing individual, partnership and some corporate returns, consider them not only as potential payers who may be required to file Forms 1099, but as potential payees for whom another payer may not be in compliance with filing required Forms 1099.
- (5) A Payor Master File (PMF) indicator, "1099 Filer," will appear on Form 5546, Examination Return Charge-Out Sheet, if the taxpayer is listed on the PMF. The case file may include a PMF transcript. If neither document is in the case file, examiners should pull PMFOL or IRPTRI to determine if the taxpayer has filed information returns.
- (6) Some LB&I examiners may waive this compliance check when it is determined that substantial compliance exists. See IRM Exhibit 4.46.3-5, Compliance Checks Tool.

## 4.10.5.6.1 (06-13-2017) Analysis of Information Returns

- (1) To ensure the timely and correct filing of information returns, examiners must ascertain that all information returns required to be filed by the taxpayer are filed for all open periods. Generally that includes the prior and all subsequent periods, as well as the period under audit.

**Note:** Examiners must conduct IDRS research (see *Internal Sources of Information* web article) and document the actions taken and results for all tax periods (see IRM 4.10.5.2.4, Case File Documentation).

- (2) At a minimum, examiners must:
  - a. Determine the potential filing requirements for information returns. See Pub 1220, Specifications for Electronic Filing Forms 1097, 1098, 1099, 3921, 3922, 5498, and W-2G, for a list of payments requiring the issuance of information returns. Certain line items of the income tax return are often indicative of an information return filing requirement.
 

**Reminder:** Expenses on the income tax return under audit must be reviewed for information return filing requirements and the findings documented even if the expenses are not audited. If the taxpayer complied with the 1099 filing requirements in the year under audit, and review of the prior and subsequent income tax returns does not identify additional expense items requiring issuance of a Form 1099, an in-depth analysis to determine potential filing requirements is not necessary for the prior and subsequent years.
  - b. Research filed information returns using command code PMFOL. Sometimes examiners will not be able to tie the amounts on the PMFOL transcript to a line item on the tax return because some payments made to the payees may be under the threshold amounts for reporting, or frag-

- mented between several deductions on the tax return, or amounts may differ due to cash versus accrual, or fiscal year versus calendar year deductions.
  - c. Question the taxpayer regarding their internal procedures for information reporting.
  - d. Verify all reporting requirements have been met.
- (3) Various Forms 1099 may be required to be filed. For each form's filing requirements, refer to the form instructions. Listed below are some Forms 1099 required to be filed by businesses:
- a. Form 1099-A, Acquisition or Abandonment of Secured Property
  - b. Form 1099-B, Proceeds From Broker and Barter Exchange Transactions
  - c. Form 1099-C, Cancellation of Debt
  - d. Form 1099-DIV, Dividends and Distributions
  - e. Form 1099-G, Certain Government Payments
  - f. Form 1099-INT, Interest Income
  - g. Form 1099-K, Payment Card and Third Party Network Transactions
  - h. Form 1099-MISC, Miscellaneous Income
  - i. Form 1099-NEC, Nonemployee Compensation
  - j. Form 1099-Q, Payments from Qualified Education Programs (Under Section 529 and 530)
  - k. Form 1099-R, Distributions from Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc.
  - l. Form 1099-S, Proceeds from Real Estate Transactions
- (4) For incomplete and nonfiled Forms 1099, consider the applicability of backup withholding. Refer to IRM 4.10.5.6.3, Backup Withholding.
- (5) Examiners must document their actions and conclusions. See IRM 4.10.5.2.4, Case File Documentation.

4.10.5.6.2  
(06-01-2010)  
**Information Return  
Penalties**

- (1) IRC 6721, IRC 6722, and IRC 6723 provide civil penalties for persons who fail to:
- a. File correct information returns (IRC 6721),
  - b. Furnish correct payee statements (IRC 6722), or
  - c. Comply with other information reporting requirements (IRC 6723).
- (2) IRC 6724 contains the definitions and provisions for waiver of information return penalties based on reasonable cause.
- (3) Examiners are required to consider the penalties during an audit if it is found that the taxpayer failed to file, filed late, or filed incorrectly. The resulting improvement in voluntary compliance (payer or payee) will justify the expenditure of time required to pursue the penalties and/or to secure copies of the incorrect or delinquent information returns.
- (4) See IRM 20.1.7.5.1, Field Examination Delinquent Information Return Procedures, for the procedures to follow when securing information returns and/or the assessment of information return penalties. See *Employment Tax Knowledge Base* on the employment tax website for the Information Returns Penalty Reporting Writing Program. Information return penalties are not subject to notice of deficiency procedures. All cases are forwarded to Centralized Case Processing at closing for assessment of the penalties.



4.10.5.6.3  
(06-13-2017)  
**Backup Withholding**

- (1) IRC 3406, generally requires payers to withhold income tax on reportable payments of interest, dividends, and other payments, including payments reported on Form 1099-MISC and Form 1099-NEC under any of the following conditions:
  - a. The payee fails to furnish a TIN to the payer in the manner required.
  - b. The Secretary notifies the payer that the TIN furnished by the payee is incorrect.
  - c. There has been a notified payee under-reporting described in IRC 3406(c).
  - d. There has been a payee certification failure described in IRC 3406(d).
- (2) Before backup withholding is addressed, the examiner must first determine whether or not a worker is an employee. See IRM 4.10.5.5.3, Worker Classification Issues. If the worker is an employee, backup withholding is not applicable and if asserted, could establish a safe haven.
- (3) When a backup withholding issue exists, examiners will discuss the case with the group manager to determine whether a backup withholding or worker classification audit is warranted or if a referral to an employment tax specialist should be considered.
- (4) When Form 1099 has not been filed by the taxpayer for a properly classified independent contractor, examiners should consider whether a condition requiring backup withholding exists along with the Form 1099 penalty case.

**Note:** Backup withholding may also be a strong alternative position to disallowing an expense for lack of substantiation. See IRM 4.10.8.12.5(4)(b), Alternative Positions, for more information.

- (5) Additional information and procedures on backup withholding are available in IRM 4.23.8.13, IRC 3406–Backup Withholding. Also see Backup Withholding on the *Employment Tax Knowledge Base*.

4.10.5.7  
(06-13-2017)  
**Information Returns and Forms Involving Foreign Entities**

- (1) An information return may be required to be filed in certain situations involving foreign entities. Examiners must make a referral on the *SRS* for international assistance when they are assigned a case that involves international information returns. See IRM 20.1.9.2, Assessment Procedures for Penalties Not Subject to Deficiency Procedures.
- (2) Some of the situations requiring the filing of an information return or form include:

Situation(s)	Files Information Return
<ul style="list-style-type: none"> <li>• A U.S. person who makes certain transfers of tangible or intangible property to a foreign corporation.</li> </ul>	Form 926, Return by a U.S. Transferor of Property to a Foreign Corporation

Situation(s)	Files Information Return
<ul style="list-style-type: none"> <li>• A U.S. person who creates a foreign trust, transfers (directly or indirectly) any money or property to a foreign trust, or is treated as the owner of any portion of a foreign trust (under the grantor trust rules).</li> <li>• A U.S. person who receives a distribution, directly or indirectly, from a foreign trust.</li> <li>• The executor of the estate of a U.S. citizen or resident decedent who was treated as the owner of any portion of a foreign trust under the grantor trust rules, or any portion of a foreign trust.</li> <li>• A U.S. person who receives certain large gifts from foreign persons.</li> </ul>	Form 3520, Annual Return To Report Transactions With Foreign Trusts and Receipt of Certain Foreign Gifts
<ul style="list-style-type: none"> <li>• A U.S. person who is treated as the owner of any portion of a foreign trust must ensure that the foreign trust files.</li> </ul>	Form 3520-A, Annual Information Return of Foreign Trust With a U.S. Owner
<ul style="list-style-type: none"> <li>• A U.S. person who controls or owns at least 10 percent of the total value or total combined voting power of a foreign corporation.</li> <li>• A U.S. citizen or resident who is an officer or director of a foreign corporation of which a U.S. person owns at least 10 percent of the total value or total combined voting power.</li> <li>• A U.S. person who owns (directly, indirectly, or constructively under IRC 958) at least 10 percent of the total combined voting power of a foreign corporation that is a controlled foreign corporation (within the meaning of IRC 957) for an uninterrupted period of 30 days or more and owns that stock on the last day of the foreign corporation's tax year.</li> </ul>	Form 5471, Information Return of U.S. Persons With Respect to Certain Foreign Corporations
<ul style="list-style-type: none"> <li>• A U.S. corporation with at least one direct or indirect 25 percent foreign shareholder at any time during the tax year and that has a reportable transaction with a foreign or domestic related party.</li> <li>• A foreign corporation engaged in a U.S. trade or business and that has a reportable transaction with a foreign or domestic related party.</li> </ul>	Form 5472, Information Return of a Foreign Owned Corporation
<ul style="list-style-type: none"> <li>• A U.S. person who is a shareholder in a passive foreign investment company.</li> </ul>	Form 8621, Return by a Shareholder of a Passive Foreign Investment Company or Qualified Electing Fund
<ul style="list-style-type: none"> <li>• A U.S. person who owns a foreign disregarded entity either directly or indirectly (by owning a 10 percent or greater interest in a controlled foreign partnership or at least 10 percent of the total value or total combined voting power of a foreign corporation).</li> </ul>	Form 8858, Information Return of U.S. Persons With Respect To Foreign Disregarded Entities (FDEs) and Foreign Branches (FBs)

Situation(s)	Files Information Return
<ul style="list-style-type: none"> <li>• A U.S. person who controls or owns a 10 percent or greater interest in a controlled foreign partnership.</li> <li>• A U.S. person who makes certain transfers of property to a foreign partnership.</li> <li>• A U.S. person who has certain changes in an ownership interest in a foreign partnership.</li> </ul>	Form 8865, Return of U.S. Persons With Respect To Certain Foreign Partnerships
<ul style="list-style-type: none"> <li>• A U.S. person that is a specified individual or a specified domestic entity and that has an interest in specified foreign financial assets exceeding the individual's or entity's reporting threshold.</li> </ul>	Form 8938, Statement of Specified Foreign Financial Assets

- (3) See IRM 4.46.3.2.6, Specialist Referral System (SRS), for additional information regarding international referrals.
- (4) IRC 7701(a)(30) defines a United States person to include a citizen or resident of the United States, a domestic partnership, a domestic corporation, and certain estates and trusts.
- (5) IRM 20.1.9, International Penalties, describes the penalties that apply for failure to timely file complete and accurate international information returns. It gives specific information regarding the types of penalties, code specific information, assertion requirements, statutes of limitations, and whether the penalties are subject to deficiency procedures.

4.10.5.8  
(03-25-2022)  
**Form 8300, Report of  
Cash Payments Over  
\$10,000 Received in a  
Trade or Business**

- (1) Form 8300, Report of Cash Payments Over \$10,000 Received in a Trade or Business, is part of the required filing checks. IRC 6050I requires any person engaged in a trade or business, who, in the course of a trade or business, receives more than \$10,000 in cash in one transaction (or two or more related transactions) to file a Form 8300 information return with respect to such transaction(s). See IRM 4.26.10, Form 8300 History and Law.

**Note:** Financial institutions, including casinos, do not use Form 8300 to report receipt of currency of more than \$10,000. They are required to file a FinCEN Form 112, Currency Transaction Report (CTR), which is not included in required filing checks. See IRM 4.10.5.9, Title 31 Compliance.

- (2) If a trade or business engages in transactions over \$10,000 and filing violations are found, examiners should discuss with their group manager whether to open a Form 8300 examination or make a referral to the Bank Secrecy Act (BSA) function. Examiners and managers may refer to IRM Exhibit 4.26.15-1, Bank Secrecy Act Referral Decision Matrix, for guidance in making the decision to develop or refer the Form 8300 issue. If a referral to BSA is warranted, Form 5346 should be prepared and sent to BSA Examination Case Selection (ECS) for consideration of a Form 8300 examination by a BSA field examination group.
- (3) If the examiner needs assistance from BSA, they should submit a request for consultation through the *SRS*.
- (4) Additional information for identifying a potential Form 8300 violation, establishing a Form 8300 examination, and developing the Form 8300 issue can be found in the following IRM sections:

- a. IRM 4.26.11, BSA Examiner Responsibilities for Form 8300 Examinations
- b. IRM 4.26.12, Examination Techniques for Form 8300 Industries
- c. IRM 4.26.15, General Program

- (5) Examiners should also consider preparing a Form 5346 for the recipient of large, unusual, or questionable cash transactions identified during an audit of a trade or business. IDRS research should be conducted before preparing Form 5346. See IRM 4.26.15.6, Uncovering a BSA Violation in a Title 26 case, for additional information.
- (6) Some LB&I examiners may waive this compliance check when it is determined that substantial compliance exists. See IRM Exhibit 4.46.3-5, Compliance Checks Tool.

4.10.5.8.1  
(06-13-2017)  
**FinCEN Use in Income  
Tax Examinations**

- (1) Financial Crimes Enforcement Network (FinCEN) information is useful in identifying cash activity that may not be accurately reported on the income tax return. In addition, it may lead examiners to discover sources of unreported income, often derived from criminal activity. See IRM 4.26.4.5.3, Examiner Uses of FinCEN Query, for additional information.
- (2) To request information, examiners use Form 10509, FinCEN Query (FCQ) Request, and submit the form to the *Exam FinCEN Super Users* listed on the website.

4.10.5.9  
(03-25-2022)  
**Title 31 Compliance**

- (1) Certain taxpayer filing requirements (e.g., Currency Transaction Report (CTR), Report of Foreign Bank and Financial Accounts (FBAR), etc.) fall under Title 31, Money and Finance, rather than Title 26, Internal Revenue Code. Examiners **must not** inquire about the taxpayer's compliance with Title 31 during the Title 26 audit. These are not part of required filing checks.

**Example:** An examiner conducting an income tax audit of a financial institution should not inquire as to the financial institution's Title 31 responsibilities for filing CTRs for cash transactions of more than \$10,000.

- (2) While FBAR is not a Title 26 requirement, examiners should verify the responses to the questions about foreign financial accounts and foreign trusts that appear on Form 1040, *Schedule B*, Part III. Examiners must use FinCEN to verify the filing of an FBAR (see IRM 4.26.15.4, FinCEN Query System (FCQ) Use in Title 26 Examinations, for requesting FinCen data). If a required FBAR has not been filed, examiners must obtain a "related statute memorandum" before an FBAR case can be started or before the taxpayer can be asked about FBAR filings. See IRM 4.26.17.2.1, Starting an FBAR Examination Resulting from Title 26 – Related Statute Memorandum (RSM) Required.
- (3) If an FBAR audit is warranted, the following resources are available to assist examiners:
  - IRM 4.26.16, Report of Foreign Bank and Financial Accounts (FBAR)
  - IRM 4.26.17, Report of Foreign Bank and Financial Accounts (FBAR) Procedures
  - *Report of Foreign Bank and Financial Accounts (FBAR)* page on the *International Knowledge Base site*
  - Contact the *FBAR Coordinator*

4.10.5.10  
(06-13-2017)  
**Excise Tax Returns**

- (1) Examiners should verify that required excise tax returns have been filed. If audit potential is noted, a referral to an excise tax specialist should be considered using the *SRS*.
- (2) Excise taxes are taxes imposed on the sale or use of various items (IRC 4041 through IRC 5881). Excise taxes administered by the IRS include fuel taxes, environmental taxes, communication taxes, air transportation taxes, manufacturer taxes, retail sales taxes, ship passenger taxes, foreign insurance taxes, and taxes on obligations not in registered form, as well as various taxes created by the ACA (e.g., tax on amounts paid for indoor tanning services). Some of these taxes are dedicated to trust funds that pay for related capital improvements such as highways and airports. Excise taxes are imposed independently of income taxes except for purposes of calculating certain income tax credits.  
  
**Note:** Excise taxes imposed on alcohol, tobacco, and firearms are not administered by the IRS.
- (3) It is important to consider the applicable excise tax requirements for different market segments. Pub 510, Excise Taxes, provides useful information on excise taxes.
- (4) Excise taxes are reported on the forms listed below:
  - Form 11-C, Occupational Tax and Registration Return for Wagering
  - Form 720, Quarterly Federal Excise Tax Return
  - Form 720X, Amended Quarterly Federal Excise Tax Returns
  - Form 730, Monthly Tax Return for Wagers
  - Form 2290, Heavy Highway Vehicle Use Tax Return
  - Form 6197, Gas Guzzler Tax
  - Form 6627, Environmental Taxes
  - Form 8849, Claim for Refund of Excise Taxes
  - Form 8876, Excise Tax on Structured Settlement Factoring Transactions
- (5) For detailed information on Form 720, see IRM 4.24.1.6, Excise Taxes Reported on Form 720. For an overview of excise taxes reported on Form 2290, Form 11-C, and Form 730, see IRM 4.24.1.8, Excise Taxes Reported on Form 2290, Form 11-C, and Form 730.
- (6) Certain excise tax-related credits may be filed on the entity's income tax return. These tax credits are filed on Form 4136, Credit for Federal Tax Paid on Fuel, Form 8864, Biodiesel and Renewable Diesel Fuels Credit, or Form 6478, Biofuel Producer Credit, as attachments to the income tax return. Contact an excise tax specialist for assistance with working questionable credits filed on these forms.
- (7) Examiners should be aware that entities involved in certain excise tax activities are required to be registered with the IRS. Registration of such entities is administered by the Excise Tax program. See IRM 4.24.2, Form 637 Excise Tax Registrations.
- (8) Some LB&I examiners may waive this compliance check when it is determined that substantial compliance exists. See IRM Exhibit 4.46.3-5, Compliance Checks Tool.

4.10.5.11  
(06-01-2010)  
**Pension Plan Returns**

- (1) Employers who provide a pension plan for their employees are required to file an appropriate information return, Form 5500, Annual Return/Report of Employee Benefit Plan. Examiners should verify that Forms 5500 were filed by reviewing command code EMFOL and determine whether a referral of the plan to Employee Plans (EP) in the Tax Exempt and Government Entities (TE/GE) function is required.
- (2) Form 4632-A, Employee Plans Referral Checksheet, should be used when reviewing the pension plan 5500 series returns. Instructions are found on the back of the form. Contact TE/GE EP for assistance, as needed. Examiners should not attempt to ascertain the correctness of the information reported on Form 5500. Examiners must complete Form 4632-A for all plans. Any plan which meets the requirements on Form 4632-A is a mandatory referral.
- (3) Form 4632, Employee Plans Referral, is used to make a referral to TE/GE Employee Plans Classification Unit. A copy of the latest IRS determination letter, if applicable, should accompany the referral.

**Reminder:** Case referrals to TE/GE are based upon the responses to the questions on Form 4632-A using Form 4632. If examiners need assistance from TE/GE, they should submit a request for specialist assistance through the *SRS*.

- (4) Some LB&I examiners may waive this compliance check when it is determined that substantial compliance exists. See IRM Exhibit 4.46.3-5, Compliance Checks Tool.

4.10.5.12  
(03-25-2022)  
**Gift (and Generation-Skipping Transfer) Returns**

- (1) A gift is a direct or indirect transfer of property (real, personal, tangible or intangible) for less than full and adequate consideration. Generally, a transferor (donor) of a gift is responsible for reporting the gift by filing a Form 709, United States Gift (and Generation-Skipping Transfer) Tax Return, if the transferor gave gifts to someone (other than a spouse or charity) in excess of the annual exclusion. Certain future interests gifts are not subject to the annual exclusion and the transferor must file Form 709 even if the gift was under the annual exclusion. See the Instructions for Form 709 for additional definitions and guidance regarding filing requirements and exceptions.
- (2) When examiners encounter potential gift tax issues during an audit, an *Estate and Gift Tax* consultation should be considered. The examiner should request an estate and gift tax consultation through the *SRS*. If after the consultation, it is determined that the transfer likely resulted in a gift, the examiner should make a referral by completing the "Referral to Estate and Gift Tax Program" form located on the *Estate and Gift Tax* website and sending the form to the Estate and Gift Workload Selection and Delivery (WSD) Referral Coordinator. See IRM 4.25.3.9, Consultations and Referrals from Other Business Units.

4.10.5.13  
(08-23-2019)  
**Health Coverage Information Returns**

- (1) Every person that provides minimum essential coverage (MEC) (defined in IRC 5000A(f)) to an individual during a calendar year must file an information return reporting the coverage to the IRS. Providers must also furnish the information to the covered individuals. MEC includes government-sponsored programs, eligible employer-sponsored plans, individual market plans, and other coverage the Department of Health and Human Services designates as MEC. Refer to the ACA website for additional information about *reporting minimum essential coverage*.



- (2) Examiners must verify that required health coverage information returns are filed. The required forms include:
- Form 1094-B, Transmittal of Health Coverage Information Returns
  - Form 1095-B, Health Coverage
  - Form 1094-C, Transmittal of Employer-Provided Health Insurance Offer and Coverage Information Returns
  - Form 1095-C, Employer-Provided Health Insurance Offer and Coverage

Use command code IRPOL to determine whether information returns were filed. See IRM 2.3.86, Command Code IRPOL, for additional information regarding what is available on IRPOL for health coverage information returns.

- (3) Generally, providers use Form 1095-B to report health coverage information to the IRS and to covered individuals. Filers must use Form 1094-B (transmittal) to transmit Form 1095-B (returns). Form 1095-B will typically list all family members who were covered by MEC and therefore aren't liable for a potential individual shared responsibility payment (SRP).

**Note:** Beginning 1/1/2019, the individual SRP was reduced to zero. Refer to *Individual Shared Responsibility Provision - Reporting and Calculating the Payment on IRS.GOV* for additional information.

- (4) Applicable Large Employers (ALE) (defined in IRM 25.21.4.3, Determining an Employer Status as an ALE) use Form 1094-C and Form 1095-C to report information about offers (or non-offers) of health coverage and enrollment in health coverage for their full-time employees. Form 1094-C must be used to report summary information for each ALE member and to transmit Form 1095-C to the IRS. Form 1095-C must also be furnished to the employee.
- a. Form 1094-C and Form 1095-C are used in determining whether an ALE Member owes an employer shared responsibility payment (ESRP).
  - b. Form 1095-C is also used in determining the eligibility of employees for the premium tax credit.

Refer to the ACA website for additional information about an ALE.

- (5) The following table provides examples of what forms are required to be filed and furnished.

If	Then	Additional information
The employer is not an ALE and self-insures employees	The employer files Form 1095-B with the IRS and furnishes a copy to the employees.	None
The employer is not an ALE and does not self-insure employees	The employer has no filing requirement.	If individuals have other MEC, the coverage provider generally files Form 1094-B and Form 1095-B with the IRS and furnishes a copy to the individuals. If individuals have coverage through the Marketplace, the Marketplace files the Form 1095-A, Health Insurance Marketplace Statement, with the IRS and furnishes a copy to the individual.

If	Then	Additional information
The employer is an ALE and self-insures employees	The employer files Form 1095-C with the IRS and furnishes a copy to its full-time employees. The employer must use Form 1095-C to report coverage for non-full-time employees. The employer files Form 1094-C and Form 1095-C with the IRS. The employer furnishes to the employee and files Form 1095-B with the IRS for non-employees if Form 1095-C is not used and furnishes a copy to the non-employees.	Employee coverage information is shown in Part III of the Form 1095-C.
The employer is an ALE and does not self-insure employees	The employer files the Form 1095-C with the IRS and furnishes a copy to its full-time employees.	If individuals have other MEC, the coverage provider generally files Form 1095-B with the IRS and furnishes a copy to the individuals. If individuals have coverage through the Marketplace, the Marketplace files the Form 1095-A, Health Insurance Marketplace Statement with the IRS and furnishes a copy to the individual.

- (6) Examiners should secure any nonfiled health coverage information returns. Information return penalties under IRC 6721 and IRC 6722 should be considered and applied if appropriate. Refer to IRM 20.1.7.5.1, Field Examination Delinquent Information Return Procedures, for procedures to follow when securing information returns and the assessment of information return penalties. The failure to file penalty applies to Form 1094-C, Form 1095-B, and Form 1095-C. The failure to furnish penalty applies to Form 1095-B and Form 1095-C. See IRM Exhibit 20.1.7-3, Forms.
- (7) If the taxpayer is required to file and does not provide the delinquent information returns, the examiner must complete the following actions:
  - a. If the employer is not an ALE and provides self-insured coverage, examiners will need to determine the number of employees who were covered. The penalty is assessed for failure to file and furnish Form 1095-B for each of these employees.
  - b. If the employer is an ALE, examiners should prepare Form 5346, submit it to the group manager for approval. If approved, forward the referral to \*SBSE ET WSD Referrals (Employment Tax Workload Selection and Delivery) for consideration of the information return penalties and ESRP. Use MFT 43 on the Form 5346.
- (8) See IRM 25.21.4, Affordable Care Act - IRC 6056 Non-Filer and IRC 4980H Compliance Process, for additional information.



4.10.5.14  
(08-23-2019)  
**Form 5346, Examination  
Information Report**

- (1) Form 5346 is used when an examiner does not expand the audit to related years or related entities, including spin-offs, and there is information of sufficient compliance value to warrant enforcement action. If there are less than 180 days remaining on the statute of limitations, there must be a firm and clearly defined issue involving substantial additional tax before a Form 5346 is prepared and approved. Form 5346 should be prepared when:
  - a. The return in question is not yet due to be filed.

**Note:** If the return has been filed, the scope of the audit should be expanded to include the additional return.
  - b. The return in question was (or will be) filed in another area.

**Note:** Examiners should discuss the case with the group manager before preparing Form 5346.
- (2) Instructions for preparing Form 5346 are included on the reverse side of the form. Examiners should include sufficient information to allow evaluation of the audit potential. If necessary, documentation may be attached to the form.
- (3) After preparing the Form 5346, examiners must submit the form to the group manager for approval and if approved, it will be forwarded to the PSP *Information Referrals Coordinator* in the applicable Area office. Examiners must exercise caution when documenting any actions taken on related or spin-off cases in the taxpayer's file.
- (4) Form 5346 is not used when the information discovered is not related to an ongoing audit (e.g., newspaper articles, informant, etc.). In these situations, examiners must complete Form 3949-A, Informal Referral, and submit it to the address listed on the form. If Form 3949-A is prepared due to contact with the informant and the informant intends to claim a reward, the informant should be advised to file Form 211, Application for Award for Original Information. See IRM 25.2.1, General Operating Division Guidance for Working Whistleblower Claims.

**Exception:** Special Enforcement Program (SEP) agents use Form 5346 for all referrals. See IRM 4.16.1.4.1, Overview.

**Caution:** Examiners and group managers are not authorized to initiate audits based on newspaper articles, informants, etc., even if the taxpayer is located in the local area.
- (5) References for Examination Information Reports:
  - IRC 7213A, Unauthorized Inspection of Returns or Return Information
  - IRM 4.1.1.6.11, Information Referrals
  - IRM 4.4.23.3.4, Form 5346, Examination Information Report
  - *LB&I Examination Information Referral Program* (LB&I only)

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## Exhibit 4.10.5-1 (06-01-2010)

### Pro Forma Employment Tax Check Sheet

Answer YES or NO to each question.

No.	YES or NO	Question
1.	_____	Are employment tax returns (Forms 940, 941, 943, 944, 945, and/or 945) filed?
2.	_____	Have employment tax returns been reconciled to deductions per the tax return where applicable?
3.	_____	Are W-2s and 1099s issued where applicable?
4.	_____	Are 1120-S corporate officers paid wages?
5.	_____	Are deductions taken for payments to "Outside Labor," "Commissions," "Consultants," "Sub-Contractors" or "Casual Labor?"
6.	_____	Are bonuses, prizes, or awards given?
7.	_____	Are fringe benefits given to employees?
8.	_____	Are employees provided with company vehicles and/or monthly allowances with no requirement to submit a travel voucher?
9.	_____	Are recurring payments made to individuals not considered employees?
10.	_____	Are any individuals rendering personal services considered non-employees?
11.	_____	Were any audits conducted by the State Workforce Agencies?
12.	_____	Are non-cash payments made? (e.g., an apartment manager living in an apartment, in exchange for services)
13.	_____	Are corporate officers performing services for more than one corporation?
15.	_____	Are there employee reimburse/accountable plan issues?

- If any of the questions from 1–3 are answered "NO", or
- If any of the questions from 4–13 are answered "YES",
- Then an employment tax issue may be present and the examiner should gather additional information to determine if an audit is warranted.

