



MANUAL TRANSMITTAL

Department of the Treasury
Internal Revenue Service

4.19.10

DECEMBER 7, 2023

EFFECTIVE DATE

(01-02-2024)

PURPOSE

- (1) This transmits revised IRM 4.19.10, Liability Determination, Examination General Overview.

MATERIAL CHANGES

- (1) IRM 4.19.10.4.2, Responsibilities of the Correspondence Examination Technicians (CET) and the Tax Examiners (TE), under (8), added that only the most egregious cases may be considered for fraud development after a Statutory Notice of Deficiency has been issued.
- (2) IRM 4.19.10.4.3, Responsibilities of the Functional Fraud Coordinator (FFC) - SB/SE only, Under (3), removed 2nd bullet - update to ST 38 no longer applicable to the (Functional Fraud Coordinator (FFC) function. Remaining bullet added to (3). Under (5), noted that the ST 24 referrals should only be egregious and the documents are received after the issuance of the statutory notice. Updated (9) with information on where the FFC will save Form 13549. Noted that the Campus Fraud Coordinator (CFC) and Fraud Enforcement Advisor (FEA) will request Counsel help if needed.
- (3) IRM 4.19.10.4.4, Responsibilities of the Exam Fraud Coordinator (EFC) - W&I Only, under (4) removed the "proceed only if the responsible party is identified" and added a reference to IRM 4.19.13.28, Campus Exam Identity Theft.
- (4) IRM 4.19.10.4.5, Responsibilities of the Campus Fraud Coordinator (CFC), updated (3) to include more information relating to ST 24 referrals. Under (3), added that cases in ST 24 should generally be declined and the CFC should consult with the FEA and Counsel to determine correct course of action. Modified the Note under 6 by removing the instruction to proceed only if the responsible party was identified and changing the existing referred IRM to IRM 4.19.13.28, Campus Exam Identity Theft. Under (9), added that the FEA will assist the CFC with completing Form 2797, if needed. Under 13, noted that the fraud referral is accepted by the BCFC, with the concurrence of the Brookhaven FEA. Added new paragraph relating to transferring cases that have fraud development potential but are outside the scope of Campus Exam.
- (5) IRM 4.19.10.4.5(8)(c), 4.19.10.4.5(11)(c) and 4.19.10.4.5.1(2)(k) added OUO for the shared drive storage locations.
- (6) IRM 4.19.10.4.5.1, Responsibilities of the Brookhaven CFC (BCFC) and the Austin EFC, added the additional responsibility of transferring cases that are approved for fraud development but not within the scope of a Campus Correspondence Examination audit.
- (7) IRM 4.19.10.4.5.2, Coordination With Counsel, removed the last sentence of (1) because it had no relation to the subsection topic.
- (8) IRM 4.19.10.4.5.4, Additional Duties of the CFC, shared drive location removed from (1)b). Under (1)g), corrected the status code for cases that will be worked by the CFC on the Audit Information Management System (AIMS) Status Workload Report.
- (9) IRM 4.19.10.4.6, Status 24 (90-Day) Referrals, Fixed an incorrect change made last year when CFC/EFC was changed to BCFC/Austin EFC. This subsection speaks to the first indication of fraud being the receipt of potentially altered documents *after* the statutory notice has been issued. This would occur prior to referral to the BCFC/Austin EFC. Changed BCFC/Austin EFC back to CFC/EFC.

Modified the note under (1) to state that in addition to the tax examiner, the referring CFC/EFC should also not issue a statutory notice on a case with indicators of fraud. Under (6)e), added that all actions must be documented in the workpaper.

- (10) IRM 4.19.10.4.7, Centralized Fraud Development Procedures, added "Brookhaven & Austin only" to the end of the title and removed (2). Under 4, added that the Form 13549 must be uploaded to the Report Generating Software (RGS) case file. Under (6)e), added that all activity must be documented in the workpaper. Part of (9)a) moved to (9). (9)a) rewritten to say that the agreement on the determination that ST 17 fraud development is no longer applicable must be documented on the Form 13549.
- (11) IRM 4.19.10.4.9, AIMS Case Control and Planning and Special Programs (PSP) Transfer procedures, in the note under (1), removed the need to include Counsel in the discussion about cases accepted into the fraud program needing at least 13 months remaining on the statute. Statute cases in the campuses are controlled by the employees and their managers. Under (7)a) and b), updated the definitions for ARC 006 and ARC 007.
- (12) IRM 4.19.10.4.10.2, 30-Day Letter Procedures, under the first "then" box in the table under (1), added that the Centralized Campus Fraud Monitoring Workbook must be updated. Under (2), added that each spouse's knowledge regarding the examination issues must be documented in the workpaper.
- (13) IRM 4.19.10.4.10.4, Withholding Only Cases, under (2) added a reference to an example of the calculation of an underpayment. Under (4), added an IRM reference for the TC 290 requirement.
- (14) IRM 4.19.10.4.14, Return Preparer Referrals, deleted subsection. Same information, with the exception of the research listed under (1), is available in 4.19.10.6, Potential Return Preparer Scheme Identification. The research from (1) will be incorporated into 4.19.10.6.
- (15) IRM 4.19.10.5, Questionable Refunds, Renamed to Questionable Refund Program (QRP), to more appropriately reflect the subsection topic. Rewrite of (1).
- (16) IRM 4.19.10.6, Return Preparer Scheme Identification, renamed to Potential Return Preparer Scheme Identification, to better reflect the subsection topic. Removed (3)b) because it does not apply since the cases being reviewed for a potential return preparer scheme would already have been updated into ST38 or ST 17. Under (3)b) added the research to be done that was previously addressed in 4.19.10.4.14. Added a note under (5)b) to say that the CFC in any campus can send the Form 14719 to the RPC. Updated the instructions on what to do with a potential return preparer scheme. Updated the instruction for the SB/SE HQ Analyst.
- (17) IRM 4.19.10.6.1, Return Preparer Penalties, included additional IRM links to return preparer penalties and added information on where SB/SE could send their return preparer penalty cases.
- (18) IRM 4.19.10.6.2, Office of Professional Responsibility, removed existing paragraphs 2-4 and provided a link to the Office of Professional Responsibility site relating to tax practitioner misconduct.
- (19) Editorial changes throughout the IRM including:
 - updates to IRM links and references
 - plain language updates
 - removed the term "Discretionary" and replaced it with "Non-EITC", for consistency throughout the IRM
 - 4.19.10.1.6, Acronyms, removed BMF and IMF from the list of definitions for common acronyms found in the IRM. Added ST, the acronym for status. Added RPPWG, the acronym for the Return Preparer Penalty Working Group.

EFFECT ON OTHER DOCUMENTS

IRM 4.19.10, dated December 06, 2022, effective date 01-01-2023, is superseded.

AUDIENCE

This IRM is intended for the use of the Small Business/Self-Employed (SB/SE) and Wage and Investment (W&I) Campus Examination Operations.

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4.19.10

Examination General Overview

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4.19.10.1
(01-01-2023)
Program Scope and Objectives

- (1) **Purpose:** This section contains information on Examination general procedures for administrative matters and provides references for common issues and related items that might be found on tax returns. Throughout the IRM, there are references to other IRMs which may contain related information needed when working cases. **The IRS Mission Statement includes enforcing the tax law with integrity and fairness to all.** Examination employees must provide the best possible service to the public, performing their duties with integrity and fairness to all. See Policy Statement 1-236, Fairness and Integrity in Enforcement Section, located in **IRM 1.2.1.2.36.** <http://irm.web.irs.gov/Part1/Chapter2/Section1/IRM1.2.1.aspx#1.2.1.2.36>.
- (2) **Audience:** This IRM is intended for use by Wage & Investment (W&I) and Small Business/Self-Employed (SB/SE) Campus Examination.
- (3) **Policy Owner:** Wage & Investment (W&I) Return Integrity and Compliance Services (RICS) Refundable Credits Program Management (RCPM), Exam Policy and Coordination (EPC) Non-EITC is responsible for clearing and publishing this IRM. The policy information in this IRM is owned and updated by W&I and Small Business/Self Employed (SB/SE) Headquarters (HQ) Analysts.
- (4) **Program Owner:** The Director of Refundable Credits Program Management (RCPM).
- (5) **Primary Stakeholders:**
 - W&I
 - SB/SE
- (6) **Contact Information:** To recommend changes or provide feedback for this IRM section, send an email to the IRM author or use the SERP Feedback Application.

4.19.10.1.1
(12-08-2017)
Background

- (1) This IRM provides information on Examination general procedures for administrative matters and references for common issues and related items that might be found on tax returns.
- (2) W&I Refundable Credits Exam Operations (RCEO) and SB/SE Campus Examination support the mission of the Internal Revenue Service (IRS) by maintaining an enforcement presence and encouraging the taxpayers correct reporting of income, deductions and credits, and estate, gift, employment, and certain excise taxes, so as to instill the highest degree of public confidence in the tax system's integrity, fairness, and efficiency. Both W&I and SB/SE Campus Examination are referred to as "Examination", "Campus Examination", or "Correspondence Examination".
- (3) The Taxpayer Advocate Service (TAS) is an independent organization within the IRS. Taxpayers contact TAS for assistance in resolving problems, when they:
 - are unsuccessful in resolving the problem through normal channels,
 - are experiencing economic harm, or
 - believe that an IRS system or procedure is not working as it should.

Note: For more information, see IRM 4.19.13.26, Taxpayer Advocate Services (TAS) Procedures.

4.19.10.1.2
(12-03-2018)
Authority

- (1) The Internal Revenue Service has the authority to conduct examinations, make assessments, and apply penalties under Title 26 of the Internal Revenue Code, Subtitle F, Procedure and Administration. Additional information relating to conducting examinations is contained in 26 CFR 601.105, Examination of returns and claims for refund, credit, or abatement; determination of correct tax liability. Examiners conduct correspondence examinations for multiple programs using Internal Revenue Code, Regulations, Policy Statements, and Policies and Procedures relevant to Correspondence Exam. The authority for the assertion of the ten-year ban when there is a final determination that the taxpayer's claim for credit is due to fraud is found in IRC 32(k)(1) for EITC, IRC 24(g)(1) for CTC/ACTC/ODC, and IRC 25A(b)(4) for AOTC.

4.19.10.1.3
(01-01-2022)
Responsibilities

- (1) Campus Examination employees:
 - Will identify returns with fraud potential and conduct research to determine the probability of non-compliance.
 - Will conduct timely examinations of tax returns and make appropriate third party contacts to determine the tax liability.
 - Are responsible for researching and following IRM procedures when processing taxpayer audits and applying the tax law with integrity and fairness to all.
 - Must understand and are obligated to protect taxpayer rights. The Taxpayer Bill of Rights (TBOR) lists rights that already existed in the tax code, putting them in simple language and grouping them into 10 fundamental rights. Employees are responsible for being familiar with and acting in accord with taxpayer rights. See IRC 7803(a)(3), Execution of Duties in Accord with Taxpayer Rights. For additional information about the TBOR, see <https://www.irs.gov/taxpayer-bill-of-rights>

4.19.10.1.4
(12-09-2020)
Program Management and Review

- (1) Audits are conducted by W&I RCEO and SB/SE Campus Operations employees.
- (2) Headquarters analyzes audit results, performs program reviews, and monitors the rule-based applications used to select inventory. The results are used to make data-based decisions to improve quality, improve case selection, and to ensure the integrity of the selection methods.
- (3) W&I Program Management (PM) is responsible for providing oversight and monitoring the performance results of the EITC and Non-EITC programs for the W&I campuses.
- (4) SB/SE Examination Planning and Performance Analysis provides support and monitors the program results for the SB/SE campuses.

4.19.10.1.5
(12-09-2020)
Program Controls

- (1) Case review is performed using the Embedded Quality Review System (EQRS). EQRS is an on-line database, used by Campus Compliance Services and Return Integrity and Compliance Services (RICS). EQRS is used by managers. The National Quality Review System (NQRS) is used by national quality reviewers. To input a Data Collection Instrument into the system, capturing results on case reviews performed. The EQ website contains an electronic Master Attribute Job Aid that provides information specific to Examination Paper and Phones. EQRS/NQRS report data is available through the EQRS/NQRS database as well as in the monthly Campus Operations Business Results reports.

4.19.10.1.6
(01-01-2023)

- (1) The following is a listing of definitions for the most common acronyms used in this IRM:

Acronyms

| Acronym | Term/Definition |
|---------|---------------------------------------|
| ACTC | Additional Child Tax Credit |
| AOTC | American Opportunity Tax Credit |
| BCFC | Brookhaven Campus Fraud Coordinator |
| CET | Correspondence Exam Technician |
| CFC | Campus Fraud Coordinator |
| CFP | Civil Fraud Penalty |
| CPS | Correspondence Production Services |
| CTC | Child Tax Credit |
| EFC | Exam Fraud Coordinator |
| FFC | Functional Fraud Coordinator |
| FEA | Fraud Enforcement Advisor |
| IDRS | Integrated Data Retrieval System |
| ODC | Credit for Other Dependent |
| RCEO | Refundable Credits Exam Operations |
| RICS | Return Integrity Compliance Services |
| RCPM | Refundable Credits Program Management |
| RPPWG | Return Preparer Penalty Working Group |
| SB/SE | Small Business/Self Employed |
| ST | Status |
| TAS | Taxpayer Advocate Service |
| W&I | Wage & Investment |

- (2) Acronyms may also be checked on the Acronym Database, <http://rnet.web.irs.gov/resources/acronymdb.aspx>.

4.19.10.1.7
(12-08-2017)

Related Resources

- (1) Examination employees are responsible for researching and using information contained in all reference materials. Other IRM chapters provide information on single topics that pertain to more than one function. Links to the most commonly used reference materials are listed below.
- IRM Part 4, Examining Process <http://publish.no.irs.gov/pubsys/irm/indp04.htm>
 - IRM Part 3, Submission Processing <http://publish.no.irs.gov/pubsys/irm/indp03.htm>
 - IRM Part 21, Customer Account Services <http://publish.no.irs.gov/pubsys/irm/indp21.htm>

- Numerical index for other IRMs <http://publish.no.irs.gov/pubsys/irm/numind.html>
- Information on forms and publications <http://publish.no.irs.gov/catlg.html>

4.19.10.1.7.1

(01-01-2023)

**Correspondence
Examination Letters**

- (1) Letters used for correspondence issues are referenced and linked in the program procedures.
- (2) The names for the Content Point of Contact (POC) and Publishing Specialist for a letter can be found by researching the Electronic Publishing web site, <http://publish.no.irs.gov/catlg.html>. Any revisions must be discussed with the Content POC.
- (3) Computer Paragraph (CP) Notices can be viewed on the Servicewide Notice Information Program (SNIP) SharePoint site, at <https://irsgov.sharepoint.com/sites/SNIP>.
- (4) New and revised letters must be approved by the Office of Taxpayer Correspondence (OTC), prior to publication. All letter headers will contain:
 - Taxpayer Identification Number
 - Form
 - Year
 - Person to Contact Name
 - Contact Person Identification Number
 - Contact Telephone Number
 - Contact Fax Number
 - Contact Hours
- (5) Correspondence letters can be prepared by the clerical staff or Tax Examiners (TE)/Correspondence Examination Technicians (CET).
- (6) Letters mailed for cases in the corporate inventory will include the appropriate Business Operating Division (BOD) toll-free number, "Tax Examiner" as person to contact, and the site-specific identification number. If the letter being sent is in reply to taxpayer correspondence, then the letter, case history, and all letter attachments must identify the originating tax examiner to provide information for any subsequent contact, if needed.

4.19.10.1.7.2

(01-01-2022)

**Standard Suspense
Periods for
Correspondence
Examination**

- (1) The following table lists the suspense period requirements for all EITC and Non-EITC cases being worked in Correspondence Examination and the earliest day for mailing the next letter. The information in the table covers manually issued letters and those issued through the Automated Correspondence Exam (ACE) System (formerly RGS Batch).

| Letter/Notice being issued | AIMS/ CEAS letter status | ACE (RGS/ BATCH) Suspense Period | Manual mailing/ closing allowed on: | Letter/Notice being issued: days = the days from the previous letter date |
|--|--------------------------|----------------------------------|-------------------------------------|---|
| EITC, W&I Non-EITC, and the single-issue Premium Tax Credit (PTC)-Initial Contact Letters (ICLs), without report | 10 | 30 days | day 31 | <ul style="list-style-type: none"> ACE – day 42 Manual – No earlier than day 31 |
| SB/SE Non- EITC - Initial Contact Letter (ICL) without report | 10 | 45 days | day 46 | <ul style="list-style-type: none"> ACE - day 63 Manual-No earlier than day 46 |
| 30-day letter with report | 22 | 45 days | day 46 | <ul style="list-style-type: none"> ACE – day 63 Manual – No earlier than day 46 |
| 15-day letter with report (i.e., Letter 692-M) | 23 or 25 | 30 days | day 31 | <ul style="list-style-type: none"> ACE – day 42 Manual – No earlier than day 31 |
| Statutory Notice of Deficiency (Within USA) – Certified Mail | 24 | 105 days | day 106 | N/A |
| Statutory Notice of Deficiency (Outside of USA) – Registered Mail | 24 | 165 days | day 166 | N/A |

(2) Generally, a manually prepared letter/notice may be mailed on the 16th day after the taxpayer's reply due date. If a letter has given a taxpayer 30 days to respond, the subsequent letter may not be mailed earlier than the 46th day from the date of the letter. The only exceptions to this are:

- For the EITC, W&I Non-EITC, and the single-issue PTC ICLs (with no report), the 30-day letter with report may be mailed no earlier than the 31st day following the ICL.
- The Letter 692-M, Request for Consideration of Additional Findings (Manual Letter), providing the taxpayer with a response/determination on submitted documents, may be mailed prior to the suspense period end date of an ICL or a 30-day letter. A manually prepared Statutory Notice of Deficiency may be mailed no earlier than the 31st day following a Letter 692-M.

(3) A letter cannot be transmitted to Correspondence Production Services (CPS) until the prior ACE suspense period has expired.

- 4.19.10.2
(01-01-2022)
Campus Return Selection
- (1) Information on the audit return selection processes for W&I and SB/SE is found in IRM 4.1.26, Campus Exam Return Selection, Delivery and Monitoring. Information for Compliance initiative projects is found in IRM 4.17, Compliance Initiative Projects.
- 4.19.10.3
(05-10-2022)
Disclosure
- (1) One of the cornerstones of the American tax system is confidentiality. The Taxpayer Bill of Rights (TBOR) lists rights that already existed in the tax code, putting them in simple language and grouping them into 10 fundamental rights. Employees are responsible for being familiar with and acting in accord with taxpayer rights. See IRC 7803(a)(3), Execution of Duties in Accord with Taxpayer Rights. Under these rights, taxpayers have the right to expect that any information they provide to the IRS will not be disclosed unless authorized by the taxpayer or by law. Taxpayers have the right to expect appropriate action will be taken against employees, return preparers, and others who wrongfully use or disclose taxpayer return information. For additional information about the TBOR, see <https://www.irs.gov/taxpayer-bill-of-rights>. Disclosure is also one of the key elements under the Case Administration Auditing Standards. See IRM 4.19.13.3.7, Standard 7 - Case Administration.
- (2) All employees must be familiar with the basic information available in IRM 21.1.3.1.7, Overview. More detailed information is always available in IRM 11.3, Disclosure of Official Information, and from your local Disclosure Officer.
- (3) Before disclosing any tax information, examiners must ensure you are speaking with the taxpayer or authorized representative. See the Taxpayer Authentication guidelines in IRM 4.19.13.9, Power of Attorney and Other Third-Party Authorizations, and IRM 4.19.19.2.1, Authentication. Examiners should review before leaving any messages on a taxpayer's voicemail, IRM 10.5.1.6.7.2, Answering Machine or Voice Mail. The facsimile procedures contained in IRM 10.8.1, Information Technology (IT) Security, Policy and Guidance, must be reviewed prior to faxing confidential information to the taxpayer.
- 4.19.10.4
(01-01-2023)
Fraud Referrals
- (1) The primary objective of the Office of Fraud Enforcement (OFE) is to foster voluntary compliance through the recommendation of a criminal investigation and civil penalties. SB/SE and W&I Campus Examination Operations have a program which includes assertion of the Civil Fraud Penalty (CFP) and imposition of the Ten-year ban for the Earned Income Tax Credit (EITC), the Child Tax Credit (CTC), the Additional Child Tax Credit (ACTC), the Credit for Other Dependents (ODC) and American Opportunity Tax Credit (AOTC).
- (2) The objective of the Campus fraud program is to:
- Identify cases with potential fraud.
 - Develop fraud with guidance from the Fraud Enforcement Advisor (FEA).
 - Transfer potential fraud cases to the field for initial or further development, if it is beyond the scope and ability of the campus examination operation. The case transfer to the field must be approved by the assigned FEA.
 - Refer potential criminal fraud cases to Criminal Investigation (CI) for criminal investigation consideration.
 - Pursue assertion of the CFP and imposition of the Ten-year ban for EITC, CTC/ACTC/ODC, and AOTC.

Note: In the W&I campuses, fraud development is centralized in Austin. In the SB/SE campuses, fraud development is centralized in Brookhaven.

- (3) The forms used to develop and refer cases with potential fraud are:
 - a. Form 13549, Campus Fraud Lead Sheet, and
 - b. Form 2797, Referral Report of Potential Criminal Fraud Cases.
- (4) Contacts are available for assistance and guidance for this program:
 - a. Campus Operations will contact the applicable Functional Fraud Coordinator (FFC) or the Campus Fraud Coordinator (CFC)/Exam Fraud Coordinator (EFC), depending on the structure of the fraud program within their campus.
 - b. The FFC will contact the CFC.
 - c. The CFC/EFC will contact the assigned Fraud Enforcement Advisor (FEA).
 - d. The CFC/EFC will contact the Headquarters Fraud Program analyst with questions regarding procedures, policy, or other issues.

4.19.10.4.1
(01-01-2023)
**Identifying Fraud in
Correspondence
Examination**

- (1) During an examination, information may be obtained which indicates the taxpayer has, or is attempting to, understate their tax liability through fraudulent means. Although only a small percentage of cases are fraudulent, it is necessary to detect and report any potentially fraudulent activities. The fraud may involve a promoter or return preparer.
- (2) Taxpayers who knowingly understate their tax liability often leave evidence in the form of identifying earmarks (or indicators). Indicators of fraud serve as a sign or symptom and may show that actions have been taken for the purpose of deceit, concealment, or to make things seem other than what they are. Indicators of fraud, by themselves, do not prove fraud. Fraud indicators are the starting point to complete further inquiry and analysis to determine if affirmative acts of fraud exist. See IRM 25.1.1.4, Indicators of Fraud vs. Affirmative Acts of Fraud. Some examples of common indicators of fraud are:
 - A history of Exam disallowance for similar issues.
 - Taxpayer responding to unreported income inquiries with unsubstantiated deductions or expenses.
 - Large, unusual or questionable (LUQ) expenses/deductions.
 - Conflicting false statements made by the taxpayer.
 - Claiming of different dependents from year to year in order to qualify for EITC and other tax credits and/or benefits.
 - Potentially false or altered forms and documents (e.g., Form W-2, Form 1099, Form 1098-T etc.).
 - Potentially false or altered documents from third parties (e.g., medical records, school letters, etc.).
 - Command Code (CC) DDBKD/MFTRAU mismatch for birth certificate cases.
 - Use of a decedent's Social Security Number (SSN) for dependent exemptions.
 - Unsubstantiated refundable credits, (e.g., American Opportunity Tax Credit (AOTC)), not verifiable through IDRS.

Note: Examiners and fraud coordinators need to conduct research if the case is from the Questionable Refund Program (QRP) inventory referrals from

Return Integrity Verification Operations (RIVO). See IRM 4.19.10.4.3, Responsibilities of the Functional Fraud Coordinator (FFC), for additional procedures on conducting preliminary research.

- (3) If fraud is suspected, the case will be referred to the FFC, CFC, or EFC, as applicable.
- (4) The case will be evaluated for fraud development by the CFC/EFC, working with the FEA, to determine if affirmative acts (e.g., deceit, subterfuge, camouflage, concealment) of fraud exist. The Internal Revenue Service (IRS) must prove that the taxpayer acted deliberately and knowingly with the specific intent to violate the law. If the CFC/EFC and the FEA determine the case has the potential for fraud development, the case will be referred to Brookhaven for SB/SE or Austin for W&I.
- (5) If preparer or promoter involvement is identified, a referral should be made. See IRM 4.19.10.6, Potential Return Preparer Scheme Identification, for procedures.

Note: Any potential fraud referrals coming from CI, such as the Return Preparer Program (RPP), should be coordinated through the HQ Analysts who will contact CI HQ and the referring Scheme Development Center (SDC).

- (6) Refer to IRM 25.1.2, Recognizing and Developing Fraud, IRM 25.1.2.3, Indicators of Fraud, and IRM 25.1.14, Fraud Handbook, Campus Examination Fraud Procedures, for additional information.

4.19.10.4.2
(01-02-2024)

**Responsibilities of the
Correspondence
Examination Technicians
(CET) and the Tax
Examiners (TE)**

- (1) Correspondence Examination Technicians/Tax Examiners (CET/TE) must familiarize themselves with indicators of fraud. See IRM 4.19.10.4.1, Identifying Fraud in Correspondence Examination, and IRM 25.1.2, Recognizing and Developing Fraud, for more information.
- (2) Identify indicators of fraud during the examination process. This may occur:
 - a. The CET/TE identifies based upon pre-examination research and analysis.
 - b. The CET/TE identifies upon determination that the same issue(s) or scheme exists in another examiner's inventory.
 - c. The CET/TE identifies based upon initial taxpayer reply and document submission, in response to an Initial Contact Letter (ICL), a 30-day letter, or Statutory Notice of Deficiency (90-day letter).
- (3) Maintain an accurate case record reflecting all statuses/actions taken, documents received from and conversations with the taxpayer, representative, return preparer, and third parties.

Note: Documentation is critical in the referral and development of fraud. Do not write on any of the documents provided by the taxpayer. Make a copy of the documents to add notes and highlight areas of interest. The CETs and other employees involved in various steps of case development will keep, when possible, simultaneous, and detailed narrative of taxpayer contact. This may be the most important portion of the case development.

- (4) Follow the existing auditing standards and preparation of work papers as defined in IRM 4.19.13, General Case Development and Resolution.

- (5) Discuss the indicators of fraud with the team supervisor/lead. If the team supervisor/lead concurs, prepare the Form 13549, Campus Fraud Lead Sheet, detailing the indicators of fraud. For instructions, see Exhibit 4.19.10-1, Campus Fraud Lead Sheet.
- (6) Secure the team supervisor/lead's initials with the date and forward the Form 13549 to the FFC, the CFC, or the EFC, as applicable.

Note: In SB/SE, after the supervisor/lead approves the fraud referral by signing the Form 13549, cases that are not in ST 24 will be updated to ST 38 on AIMS and RGS. Cases in ST 24 will be updated to ST 38 on RGS only. Also see IRM 4.19.10.4.9(5), AIMS Case Control and Planning and Special Programs (PSP) Transfer Procedures.

- (7) Expedite the referral process for cases in ST 22 when the taxpayer's response indicates fraud. Do not change the status code. The RGS suspense date may need to be updated to prevent automatic issuance of the 90-day letter, Statutory Notice of Deficiency. You must document the actions taken.
- (8) If the case is in ST 24, only consider a referral if the taxpayer's response includes suspected altered documents and was received **after** the 90-day letter was issued. Do not change the status code. The RGS suspense date may need to be updated to prevent an assessment of the tax and penalty as a result of the automatic default of the 90-day letter, Statutory Notice of Deficiency (SNOD). Only egregious cases may be considered for fraud development after a SNOD has been issued.
- (9) Research identity theft indicators on AIMS and IDRS and take the appropriate action. Refer to IRM 25.23, Identity Protection and Victim Assistance, and IRM 4.19.13.28, Campus Exam Identity Theft.

4.19.10.4.3
(01-02-2024)
**Responsibilities of the
Functional Fraud
Coordinator (FFC) -
SB/SE only**

- (1) Serve as the point of contact for the tax examiner and team supervisor/lead for help with potential fraud referrals in their function.

Note: The Functional Fraud Coordinator (FFC) positions are in the Automated Under Reporter (AUR) Examination function and, if applicable, in Classification, Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA) Units in the SB/SE Campuses. The AUR function is aligned under the SB/SE Division and the referral process is handled under the SB/SE Campus Exam Fraud program. Atlanta and Austin are aligned with Cincinnati. Fresno is aligned with Ogden. Andover and Brookhaven are aligned with Brookhaven. Philadelphia is aligned with Philadelphia. AUR FFCs will follow IRM 4.19.3.5.8.3, AUR Functional Fraud Coordinator Responsibilities.

- (2) Ensure Form 13549 is properly completed by the CET/TE and approved by the team supervisor/lead. If:
 - the CET/TE did not complete all the applicable Form 13549 sections and provide detailed information on the apparent and specific indicators of fraud, return the document to the CET/TE for correction.
 - the team supervisor/lead did not initial and date the Form 13549 to indicate their approval for the referral, return the document to the team supervisor/lead for correction.

- (3) Review the information, provided by the tax examiner and team supervisor/lead, on Form 13549. If there is insufficient evidence for fraud development, decline the referral and return it to the originator. Document the reason for the declination so that the originator has a clear understanding of why the case could not be developed for fraud.
- (4) Conduct preliminary IDRS research, on the tax year submitted, for fraud development:
 - Check the Assessment Statute Expiration Date (ASED). If it is less than one year, decline the referral and return it to the SB/SE Exam team.
 - Look at prior and subsequent years to see if the same issues (pattern) or other fraud related matters exist for case development.

Note: If there is merit to the referral but for administrative timeframe and actions, fraud development is impractical, the FFC will determine if the same issues exist on subsequent year(s). The FFC will provide the information to the CFC. If the CFC approves fraud development for the subsequent year(s), the applicable case information from the declined year must be scanned and provided to the CFC for the subsequent year(s) case development.

 - If there is a QRP indicator showing Return Integrity Verification Operations (RIVO), CI, or Exam involvement, see IRM 4.19.14.9.2, QRP Source Code and Project Codes, for more information. If transaction code (TC) 971 with action code (AC) 136, 134, 099, or 617 is present in the current, prior, or subsequent years, do not refer the case unless false or altered documents are present.
 - If there are identity theft indicators on the account, refer to IRM 25.23, Identity Protection and Victim Assistance, for more information.
- (5) Expedite the referral when the case is in the ST 24 suspense period, only if it is egregious and involving suspected altered documents received after the date of the 90-day letter. Contact the CFC immediately and make a prompt decision regarding the case. The issuance of a Statutory Notice of Deficiency, Letter 3219, does not preclude subsequent fraud development; but it does create some additional considerations. Questionable documents received prior to the issuance of the statutory notice cannot be used to refer the case for fraud development. Referring the case for fraud development, after the issuance of the statutory notice, must be based on taxpayer responses and document submissions received after the issuance of the statutory notice. The CFC and the FEA will request Counsel assistance to determine the appropriate course of action, if needed.
- (6) Accept or decline the fraud referral within 10 business days; this includes transfer of cases to a co-aligned campus:
 - a. If the referral is accepted, the completed Form 13549 and the case file documents will be forwarded to the CFC for consideration. If the case is being transferred from AUR, the FFC will input a process code that suspends action on the case in the AUR system and annotate on Form 13549 that the case has been accepted for examination. No tax or credit adjustments will be made by AUR. The AUR discrepancy will be addressed as part of the examination.
 - b. If the referral is declined for fraud development, the FFC must provide a written explanation for the declination in Section VI, Explanation for Decli-

nation, of Form 13549 and return a copy of the completed form and the case to the CET/TE through the team manager/lead.

- (7) Document all research and activities on Form 13549. See Exhibit 4.19.10-1, Campus Fraud Lead Sheet.
- (8) Update the taxpayer information and Functional Fraud Coordinator sections in the Centralized Campus Fraud Monitoring Workbook. SB/SE will follow the instructions included under separate tab in the workbook.
- (9) Place the most current Form 13549 in the case file and save a copy of the form to the shared storage drive, after renaming the form to include the referral number (e.g., 0001-23PH-F13549).
- (10) Refer to IRM 25.1.14, Campus Examination Fraud Procedures, for additional information.

4.19.10.4.4 (01-01-2023)

Responsibilities of the Exam Fraud Coordinator (EFC) - W&I Only

- (1) Ensure Form 13549 is properly completed and approved by the CET/TE supervisor/lead.
- (2) Review Form 13549 received from the CET/TE to determine if sufficient indicators of fraud exist.
- (3) Conduct further research as needed and document the results on Form 13549, Section V, Fraud Indicators and Development Actions.
- (4) Refer to IRM 4.19.13.28, if identity theft is present, IRM 4.19.13.28, Campus Exam Identity Theft.
- (5) Update referred cases to EGC 5024. Accept or decline the Form 13549 referral within 21 business days of receipt. This includes contacting the FEA within 10 business days to discuss the case.
 - a. If the referral is accepted, the EFC will contact the FEA to discuss fraud development consideration.
 - b. If the referral is declined, the reason for the declination will be entered in Section VI, Explanation for Declination, of Form 13549. The case will be updated back to the prior EGC and returned to the CET/TE through the team supervisor/lead.
- (6) The table below lists the actions that the EFC will take on referrals:

| If | And | Then |
|--|---|--|
| The referral originated in W&I Exam other than Austin | The FEA concurs that the case can be developed for fraud in Correspondence Examination. | The EFC will: <ol style="list-style-type: none"> 1. Complete Form 13549, with the facts of the case and results of the research. 2. Secure FEA recommendation to transfer case to Austin Exam on Form 13549. 3. Transfer the case to Austin Exam. |
| The referral originated in the Austin Exam | The FEA concurs that the case can be developed for fraud in Correspondence Exam. | The Austin EFC will: <ol style="list-style-type: none"> 1. Complete Form 13549 with the facts of the case and results of the research. 2. Secure FEA recommendation to update case on AIMS to Status 17 on Form 13549. 3. Follow the procedures in IRM 4.19.10.4.7, Centralized Fraud Development Procedures, Brookhaven and Austin only. |

| If | And | Then |
|---|--|---|
| The referral originated in any W&I Campus Exam | The FEA concurs that the case should be developed by Field Office Examination. | The EFC will: <ol style="list-style-type: none"> 1. Complete Form 13549 with the facts of the case and results of the research. 2. Secure FEA recommendation to transfer the case to the field on Form 13549. 3. Follow the transfer procedures in IRM 4.19.10.4.9, AIMS Case Control and PSP Transfer Procedures. |
| The referral originated in any W&I Campus Exam | The FEA concurs that the case should be referred to CI for criminal investigation consideration. | The EFC will: <ol style="list-style-type: none"> 1. Complete Form 13549 and Form 2797, with the facts of the case and results of the research. 2. Secure FEA recommendation to update case on AIMS to ST 18. 3. Transfer case to CI per IRM 25.1.3, Criminal Referrals. |

Note: If the potential fraud referral transferred for fraud development is declined in Austin, the case will be worked by Austin Correspondence Exam. The case will not be returned to the originating campus.

- (7) Update the Taxpayer Identification, Campus Fraud Coordinator and Fraud Enforcement Advisor Recommendation sections in the Centralized Campus Fraud Monitoring Workbook.
- (8) For additional information, see IRM 25.1.14, Campus Examination Fraud Procedures.
- (9) The Austin EFC will also follow the procedures under IRM 4.19.10.4.5.1, Responsibilities of the Brookhaven CFC (BCFC) and the Austin EFC, and IRM 4.19.10.4.7, Centralized Fraud Development Procedures, Brookhaven and Austin only.

4.19.10.4.5
(01-02-2024)

**Responsibilities of the
Campus Fraud
Coordinator (CFC)**

- (1) Ensure Form 13549 is properly completed and approved by the initiator's supervisor/lead. The form must contain the required digital signatures and dates.
- (2) Update the Centralized Campus Fraud Monitoring Workbook. Follow the instructions included under separate tab in the Workbook. The referral tracking number on Form 13549 must match the entry on the Centralized Campus Fraud Monitoring Workbook.
- (3) If the case is not in status ST 24, update the case to ST 38. If the case is in ST 24, generally the referral should be declined. In rare instances, when the taxpayer submits fraudulent documents after a SNOD has been issued, the CFC should consult with the FEA and Counsel (if necessary) to determine the next appropriate course of action.
- (4) Update the referred cases to the appropriate employee group code (EGC); 5500 for Philadelphia & Memphis, 5335 for Cincinnati, 5195 for Ogden, and 5217 for Brookhaven.
- (5) Review the Form 13549 to determine if sufficient indicators of fraud exist.
- (6) Conduct further research as needed and document the results on Form 13549, Section V, Fraud Indicators and Development Actions.

Note: If identity theft is present, refer to IRM 4.19.13.28, Campus Exam Identity Theft,.

- (7) Accept or decline the Form 13549 within 21 business days. This includes contacting the FEA within 10 business days to discuss the case and obtaining acceptance or denial from the Brookhaven CFC (BCFC).
- (8) If the CFC determines that the referral does not warrant fraud development (and the case will not be referred to the BCFC):
 - a. Note the reason for declination on Form 13549, Section VI, Explanation for Declination
 - b. Update the Centralized Campus Fraud Monitoring Workbook
 - c. Save the completed Form 13549 (signed and dated) to the shared storage subdirectory. Rename the form to include the referral number before saving (e.g., 0001-22PH F13549). The shared drive storage is
 - d. Return the completed Form 13549 to the CET's manager or to the FFC for AUR referrals. The CFC should suggest applying the Negligence Penalty and the Two-Year Ban if EITC, CTC/ACTC/ODC, or AOTC is involved by making the appropriate notations when returning Form 13549.
 - e. For cases originating in correspondence exam, update the status on AIMS and RGS to the status code prior to ST 38 and return the case to the EGC of the examiner who last worked or referred the case.
 - f. For referrals from AUR, update the status on AIMS and RGS to the ST code prior to ST 38 and return the case to the FFC who will continue the examination. The FFC will consider and apply the negligence penalty if appropriate.

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- (9) If the CFC and FEA determine the case should be referred to Criminal Investigation, the CFC will prepare Form 2797, Referral Report of Potential Criminal Fraud Cases, and refer the case to CI if affirmative acts of fraud are established and criminal criteria are met. The FEA will assist the CFC with completing the Form 2797, if needed.
- (10) If the CFC and FEA agree the case requires further development, and it is outside the scope of Campus Correspondence Examination, transfer the case to the SB/SE Area Office. See IRM 4.19.10.4.9.1, Transfer of Fraud Cases for Area (Field) Examination.
- (11) If the CFC and FEA determine that the referral has potential for fraud development in Brookhaven, the CFC will:
- a. Ensure that all supporting case documents are scanned into RGS. Update the RGS case history and workpaper.
 - b. Notify the BCFC of the referral by emailing the completed Form 13549, via secure messaging, to **SBSE CEA Fraud Centralization*. The subject line of the email will contain the referral number and a response due date (e.g., 0001-22PH F13549 due MM-DD-YYYY).
- Note:** If the referral is from AUR, all case documentation and Form 13549 is emailed to the centralized mailbox. If accepted for fraud development, the BCFC establishes the case on AIMS, creates the RGS case and scans supporting case documents into RGS.
- c. Save the completed Form 13549 (signed and dated) to the shared storage subdirectory. Rename the form to include the referral number before saving (e.g. 0001-22PH F13549). The shared drive storage is located at #
 - d. Prepare and mail Letter 3164-E (Exam 1) Third-Party Contact Letter. Save a copy of the letter in CEAS and update the case history of the action.
- (12) If the fraud referral is declined by the BCFC, the BCFC will return the completed form 13549 (dated, signed, and noting reasons for declination) to the CFC. Since the CFC accepted the fraud referral, the CFC will work the case through examination closure (including consideration of the negligence penalty and appropriate ban).
- (13) If the fraud referral is accepted by the BCFC, with the concurrence of the Brookhaven FEA, the referring CFC will:
- a. Secure a signed and dated Form 13549 from Brookhaven, verifying acceptance by the BCFC, group manager and FEA.
 - b. Transfer the case (on AIMS and RGS) to Brookhaven for fraud development. The case should be in ST 38 or, in very rare circumstances, ST 24 when transferring.
- Note:** All paper case files will remain at the originating campus location until the BCFC closes the case. Once the case is closed, the paper files are sent to files for association. When the case is closed, the BCFC will highlight the case in yellow on the Fraud Development Status Report spreadsheet, in the Centralized Campus Fraud Monitoring Workbook.
- c. Issue Letter 86C, Referring Taxpayer Inquiry/Forms to Another Office, to the taxpayer.

- d. Notate all actions taken on Form 13549. The form should clearly reflect the acceptance of the fraud referral, the status, and the organization code the case was updated to. Return a copy of the completed form to the CET/TE through the team supervisor/lead or the FFC for AUR referrals.

4.19.10.4.5.1
(01-02-2024)

**Responsibilities of the
Brookhaven CFC (BCFC)
and the Austin EFC**

- (1) When the BCFC/Austin EFC receive a Form 13549 fraud development referral, they will:

- a. Verify that the submitted Form 13549 is complete and saved appropriately.
- b. Respond to the CFC/EFC with the decision to accept or decline the referral.
- c. Return Form 13549 to the CFC/EFC if declined, notating reasons for declination.

- (2) Accepted referral responsibilities include:

- a. Emailing the Form 13549 to the originating CFC/EFC to document acceptance of the referral.
- b. Establishing AUR referrals on RGS and AIMS. SB/SE will use source code (SC) 85 and employee group code (EGC) 5217. W&I will use SC 85, EGC 5024, and primary business code (PBC) 192.
- c. Updating the case to ST 17, fraud development status.
- d. Developing the CFP issue, including the ten-year EITC, CTC/ACTC/ODC, and AOTC ban if applicable.
- e. Coordinating the CFP case/ten-year EITC, CTC/ACTC/ODC, and AOTC ban with the FEA.
- f. Contacting third parties, as appropriate. Follow IRM 4.19.10.4.12, Third Party Notification Procedures for Campus Fraud Cases.
- g. Preparing and issuing the 30-day letters.
- h. Preparing Form 886-A, Explanation of Items, to explain the adjustments for the fraud issue(s). See the examples in Exhibit 4.19.10-4, Form 886-A 90 Day Overview.
- i. Computing and reviewing the civil fraud and/or fraudulent failure to file penalty computations.
- j. Preparing and issuing the Statutory Notice of Deficiency (90-day letter) containing the CFP, ten-year EITC, CTC/ACTC/ODC, and AOTC ban, and Fraudulent Failure to File penalty, as applicable, and ensuring the proper alternative positions are specified in the package.
- k. Saving completed Forms 13549 to the RGS casefile. The BCFC will also save the form to the shared storage drive subdirectory. Before saving, add the referral number to the front of the file name (e.g., 0001-22PH F13549).

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for 3 years.

- l. Preparing Form 2797 to refer the case to CI if affirmative acts of fraud are established and criminal criteria are met.
- m. Transferring the case to the appropriate field office when fraud development is approved, but not within the scope of a Campus Correspondence Examination audit. See IRM 4.19.10.4.9.1, Transfer of Field Cases for Area (Field) Examination.
- n. Numbering and entering Forms 13549 into the Centralized Campus Fraud Monitoring Workbook, on receipt.

- o. Updating, monitoring, and ensuring the accuracy of the Centralized Campus Fraud Monitoring Workbook, on a regular basis. Recording all prior month activity by the 5th day of the subsequent month.
- p. Comparing the Office of Fraud Enforcement report to the Centralized Campus Fraud Monitoring Workbook to ensure all cases are properly recorded and reflect the correct status. Any discrepancies must be researched and resolved as soon as possible.
- q. Working the AIMS Status Workload Report for cases in ST 17 and reconciling the report to the Centralized Campus Fraud Monitoring Workbook.
- r. Timely responding to the HQ Analyst regarding the required quarterly update for user access to the Centralized Campus Fraud Monitoring Workbook.
- s. Providing an updated campus fraud program staffing chart to the HQ Analyst when changes are made.
- t. Creating and mapping a new Centralized Campus Fraud Monitoring Workbook at the beginning of each new fiscal year.

(3) Additional responsibilities include:

- a. Evaluating audit reconsideration requests involving a previously asserted CFP
- b. Coordinating and delivering fraud training for other SB/SE CFCs and W&I EFCs

4.19.10.4.5.2
(01-01-2024)
**Coordination with
Counsel**

- (1) Counsel review and approval is not required before the issuance of the 90-day letter unless the case falls under the criteria for mandatory review listed in IRM 4.8.9.10.2.1, Mandatory Area Counsel Review. Per Counsel guidance, there is one exception to the mandatory review - under IRM 4.8.9.10.2.1(1)a, Campus "Fraud Penalty" cases for individual taxpayers are excluded. However, the BCFC/Austin EFC may request a review/approval from Counsel, based on their judgement of the facts and circumstances of the case.

4.19.10.4.5.3
(01-01-2022)
**Supervisory Approval of
Penalties and Bans**

- (1) IRC 6751(b) requires supervisory approval for the assessment of a penalty that includes any addition to tax or any additional amount, excluding section 6651, 6654 or 6655, and any other penalty calculated by electronic means.
- (2) IRC 6751(b) does not apply to the 2/10 year ban. Supervisory approval, for the assertion of the 2/10 year ban, is required as a matter of Campus Examination policy.
- (3) Supervisory approval for penalties and bans must be obtained and documented prior to the issuance of any letter/report including a penalty or ban (and the opportunity to protest the penalty or ban with the IRS Independent Office of Appeals).
- (4) For more information on supervisory approval of penalties and bans, see:
- IRM 4.19.13.7.1, Supervisory Approval of Penalties
 - IRM 4.19.13.7.1.1, Supervisory Approval of Bans
 - IRM 20.1.5.2.3, Supervisory Approval of Penalties - IRC 6751 Procedural Requirements
 - IRM 20.1.5.2.3.1, Documenting Supervisory Approval of Penalties

4.19.10.4.5.4
(01-02-2024)

Additional Duties of the CFC

(1) The CFC also has the responsibility of:

- a. Maintaining copies of the file including Form 13549 and Form 2797 for a retention period of 3 years after the case is closed.
- b. Saving a copy of Form 13549 and Form 2797 (if applicable) to the shared drive storage subdirectory. Refer to **IRM 1.15.6.6(3)b**, Creation, Use, and Maintenance of Unstructured Electronic Data, All Employees Responsibilities, for Shared Drive storage guidance.

Note: The signed Form 13549 will be renamed to include the referral number (e.g., 0001-22PH F13549).

- c. Evaluating audit reconsideration requests of the civil fraud penalty, previously asserted by the campus.
- d. Coordinating, and delivering fraud training for new campus employees, as well as annual fraud awareness for Continuing Professional Educational (CPE).
- e. Serving as the point of contact with the headquarters (HQ) analysts.
- f. Monitoring, updating, and ensuring the accuracy of the applicable sections of the Centralized Campus Fraud Monitoring Workbook.
- g. Working the AIMS Status Workload Report, for cases in ST 38, in the assigned EGC.
- h. Timely responding to the headquarters analyst about the required quarterly update for user access to the Centralized Campus Fraud Monitoring Workbook.
- i. Providing an updated campus fraud program staffing chart to the headquarters analyst when any changes are made.

4.19.10.4.6
(01-02-2024)

Status 24 (90-Day) Referrals

(1) The CFC/EFC will coordinate with the FEA and Counsel to discuss the subsequent course of action when the case is in ST 24 and the taxpayer submits apparently false or altered documentation after the issuance of the Statutory Notice of Deficiency.

Note: These actions are applicable when the first indication of fraud or submission of altered documents occurs **after** the issuance of the 90-day letter. The tax examiner or referring CFC/EFC should not issue a 90-day statutory notice on a case with suspected fraud.

- (2) The CFC/EFC will expedite contact with Counsel if the case is in ST 24 and the taxpayer's response includes suspected altered documents. They will inform Counsel that the taxpayer is suspected of submitting false or altered documentation and ask whether fraud development should be pursued. Counsel should be consulted on a case-by-case basis and IRM 4.8.9, Statutory Notices of Deficiency, guidelines must be followed to ensure that the notice accurately reflects the IRS position, should the case proceed to Tax Court.
- (3) If the taxpayer's actions are serious enough to warrant a referral to Criminal Investigation (CI), Counsel must be consulted immediately.

4.19.10.4.7
(01-02-2024)

**Centralized Fraud
Development
Procedures, Brookhaven
and Austin Only**

- (1) The originating campus completes the Form 13549, including documenting the reasons for the potential fraud, and forwards the form to the Brookhaven CFC (for SB/SE) or the Austin EFC (for W&I) for fraud development consideration. W&I campuses will also transfer the case on AIMS/RGS to Austin. SB/SE campuses will only transfer the case once Brookhaven has approved and accepted the case for fraud development.
- (2) Form 13549 documents the approval of the CFC/EFC/FEA and CFC/EFC's group manager for placing a case in ST 17, fraud development status. A case should not be placed into or taken out of ST 17, without consulting the FEA. If a disagreement arises over whether a case is placed into ST 17 or remains in ST 17, the final decision rests with the CFC/EFC's group manager.
- (3) The CFC/EFC's group manager reviews Form 13549, indicates their approval by signing their name, dating, and electronically forwarding the completed form to the FEA for consideration.
- (4) If the FEA concurs with fraud development, they will sign and date the Form 13549 and return it to the CFC/EFC and the CFC/EFC's group manager. A copy of the form is retained by the FEA and uploaded into the RGS casefile.

Note: In SB/SE, a copy of the Form 13549 will be sent to the originating campus CFC and CFC group manager. The form will be renamed using the referral number (e.g., 0001-22PH F13549) and saved to the shared storage drive.

- (5) For cases approved for fraud development, the FEA must prepare and document the agreed upon "plan of action," under Section VII of the Form 13549. The plan will:
 - a. Provide audit steps required to establish affirmative acts (proof) of fraud;
 - b. Be the joint effort of the CFC/EFC, the group manager, and the FEA;
 - c. Guide the case to its appropriate conclusion in a timely manner;
 - d. Specify any direct assistance the FEA will provide. The role of the FEA can be more advisory or consultative in nature; and
 - e. Be in writing and documented, with a copy of the initial plan and follow-up actions. All actions must be documented in the workpapers.
- (6) The CFC/EFC will update the case on AIMS/RGS to ST 17 and secure the original tax return(s), if requested by the FEA or Counsel. Usually, the case can be developed using the existing tax return facsimile or document. The CFC/EFC will proceed with the plan until affirmative acts of fraud are established or a determination is made that fraud is no longer potentially applicable or cannot be proven. Cycle time for cases in ST 17 is excluded from the monthly aging reports.

Note: Timely action is required on all cases that are in fraud development status. Warning: The CFC/EFC or the group manager should **never** obtain advice from CI for a specific case under examination/collection activity. When approved for fraud development, the case is assigned to the CFC/EFC. The referring tax examiner is not responsible for subsequent action(s) on the case. The Austin EFC will provide a quarterly case status update, if requested by the referring EFC.

- (7) If affirmative acts of fraud are established:

- a. The CFC/EFC will suspend the examination and immediately notify their group manager and the FEA;
 - b. The FEA will generally recommend a referral to CI, if criminal criteria are met (See IRM 25.1.3, Criminal Referrals); and
 - c. The FEA will generally recommend assertion of the civil fraud penalty and/or the fraudulent failure to file penalty and imposition of the Ten-Year EITC, CTC/ACTC/ODC, or AOTC ban(s). See IRM 25.1.6, Civil Fraud.
- (8) If a determination is made that fraud is no longer potentially applicable, cannot be proven, or that the case will be transferred to the field or other BOD for fraud development::
- a. The mutual agreement between the CFC/EFC, the CFC/EFC group manager, and the FEA for removing the case from ST 17 fraud development must be documented on Form 13549.
 - b. In SB/SE, the BCFC will update the case to the status code prior to ST 38, retain control of the case, and complete the examination. The BCFC should appropriately consider an alternative position of applying the applicable penalty and ban such as the Negligence Penalty and the Two-Year Ban, if EITC, CTC/ACTC/ODC, and AOTC are involved.
 - c. In W&I, the EFC will return the case to Austin Correspondence Examination in the prior status code to continue examination. The EFC should indicate that Correspondence Examination should appropriately consider an alternative position of applying the applicable penalty and ban, such as the Negligence Penalty and the Two-Year Ban if EITC, CTC/ACTC/ODC, or AOTC are involved.
- (9) For procedures relating to case transfer, see IRM 4.19.10.4.9, AIMS Case Control and Planning and Special Programs (PSP) Transfer Procedures and IRM 4.19.10.4.9.1, Transfer of Fraud Case for Area (Field) Examination.

4.19.10.4.8
(01-01-2014)
**Responsibilities of the
Fraud Enforcement
Advisor (FEA)**

- (1) See IRM 25.1.14, Fraud Handbook, Campus Examination Fraud Procedures.

4.19.10.4.9
(01-01-2024)
**AIMS Case Control and
Planning and Special
Programs (PSP) Transfer
Procedures**

- (1) If the case is not open on AIMS and it has been accepted into the campus fraud program for development, the BCFC/EFC, will establish the case on AIMS in the appropriate EGC.
- a. W&I will establish the case in EGC 5024.
 - b. SB/SE will establish the case in EGC 5217.

Note: Cases accepted into the Campus Fraud Program should have at least 13 months remaining on the statute. Any exceptions to this should be discussed with the CFC/EFC's group manager.

- (2) In W&I, if a case is open on AIMS, and accepted by the EFC/FEA, the case is updated to EGC 5024 and transferred on RGS/AIMS to the Austin Campus. Refer to the W&I Fraud Transfers of Potential Fraud Cases to Austin job aid and the Transfer Checksheet on SERP.
- (3) In SB/SE, if the case is open on AIMS and accepted by the CFC/FEA, the case is updated to ST 38, within 21 business days. The case remains in the

originating campus EGC until acceptance by the BCFC/FEA for fraud development. Once the BCFC/FEA accepts a case, it will be transferred to Brookhaven and updated to ST 17. The BCFC is then responsible for the examination, development of the fraud issue, and mailing of the Form 4549 and Form 886-A, etc.

- (4) When applicable, prior and subsequent year returns will be opened for exam. Current exam procedures will be followed.
- (5) Use the following organization function program (OFP) Code when working a fraud case:
 - a. 93421 for W&I Non-EITC Fraud Referrals or 93621 for W&I EITC Fraud Referrals. Function Codes 710, 720 and 730 are approved for use in W&I.
 - b. 710, 730, 740, or 790–91892 for SB/SE fraud development work other than performed by an FFC or CFC.
 - c. 640–91424 for FFCs reviewing initial fraud referrals to SB/SE.
 - d. 730 or 740–91891 for SB/SE CFCs only.
- (6) Update the case(s), with FEA approval for fraud development, with the appropriate Project Code:
 - a. 0076, Non-EITC ,or
 - b. 0691, EITC Fraud.
- (7) A case selected for field examination, on the joint recommendation of the FEA and CFC/EFC, will be transferred to the respective Area PSP Office, using Form 3185, Transfer of Return, and cover memo. See Exhibit 4.19.10-2, W&I PSP Fraud Memo, and Exhibit 4.19.10-3, SB/SE PSP Fraud Memo. The case will be transferred in ST 07 with an AIMS Aging Reason Code (ARC) of:
 - a. ARC 006 - fraud workload originating in campus, or
 - b. ARC 007 - substantial exam issues, originating in campus.
- (8) For additional information on transferring cases for field examination, see IRM 4.19.10.4.9.1, Transfer of Fraud Case for Area (Field) Examination.
- (9) For additional information on AIMS transfer procedures, contact your Campus AIMS Coordinators and refer to IRM 4.4.33, AIMS Procedures and Processing Instructions -Transfers.

4.19.10.4.9.1

(01-01-2023)

Transfer of Fraud Case for Area (Field) Examination

- (1) Fraud cases approved for Area (Field) examination are transferred to the respective Area PSP office.
- (2) The referral must be established on AIMS, be in the correct EGC, and reflect the correct aging reason code (ARC). There must be a minimum of 13 months left on the statute. See IRM 4.19.10.4.9, AIMS Case Control and Planning and Special Programs (PSP) Transfer Procedures.
- (3) Form 3185, Transfer of Return, documents the transfer of the case and receipt by Area Office. The form must:
 - a. Be filled out completely, including checking the box to indicate that the exam has started and providing campus contact name and phone number.

- b. Include the following standard paragraph added to the Comments section of the form: "The attached case has considerable fraud potential. The FEA and the BCFC/CFC/Austin EFC/EFC concur that fraud development is better suited for Area exam assignment (see attached Form 13549)."
 - (4) Use the appropriate PSP Fraud Memo to send with the transfer. See Exhibit 4.19.10-2, W&I PSP Fraud Memo, and Exhibit 4.19.10-3, SB/SE PSP Fraud Memo.
 - (5) Transfer the fraud case to the attention of the Fraud Coordinator, at the appropriate PSP office, under separate cover. PSP contact information can be viewed by selecting the link to Employee Group Code (EGC) Contacts under the AIMS Assignee Code Contact Listings at <https://portal.ds.irsnet.gov/sites/VL091/Lists/AIMS/DispItemForm.aspx?ID=8>.
 - (6) The full PSP transfer package includes:
 - Completed Form 3185,
 - The appropriate PSP Transfer Memo,
 - Form 13549 with BCFC/CFC/Austin EFC/EFC/FEA recommendation/ approval for transfer to the Area PSP office for fraud development,
 - Research used to develop the issues,
 - Return facsimile, with potential fraud issues properly identified, and
 - Completed Form 3210, Document Transmittal.
 - (7) The PSP Fraud Memo requests a response from the Area PSP, regarding acceptance or rejection, within 10 business days. If a timely response is not received, the BCFC/CFC/Austin EFC/EFC must contact Area Office for their decision.
- Note:** It is recommended that the BCFC/CFC/Austin EFC/EFC/FEA monitor for the receipt of the Form 3210 acknowledgement copy. The originator's copy of the Form 3210 can be used to monitor case acceptance or rejection. Phone calls and emails to ensure a timely response should be notated.
- (8) If the Area PSP Office declines the case, the BCFC/CFC/Austin EFC/EFC must ensure the case is promptly transferred back and consult with the FEA on the next course of action.

4.19.10.4.9.2
(12-09-2020)
**Monitoring the Issuance
of Manual Interim
Letters on Open Mail
Cases in Status 17**

- (1) When a case is updated to ST 17, the automated process for acknowledging the receipt of mail and sending interim letters is not available. Interim letters must be manually generated and cases must be monitored to ensure the letters are mailed timely. Mail will be acknowledged within 30 days of receipt. Additional interim letters are sent when no response has been sent to the taxpayer within established timeframes. See IRM 4.19.13.12, Monitoring Overaged Replies, for details. Document all activity in the case history.
 - a. Letter 2645-C, Interim Letter, or another applicable interim letter, is sent to the taxpayer within 30 days from the correspondence received date (CRD).
 - b. If subsequent contact is needed, Letter 2644-C, Second Interim Response, or another applicable interim letter, is sent to the taxpayer.

4.19.10.4.10
(01-01-2023)
**Program Letters and
Actions to Close Case**

- (1) For cases transferred to another campus or other examination location, the originating campus will mail Letter 86C, Referring Taxpayer Inquiry/Forms to Another Office, to the taxpayer. If any prior contact occurred with the taxpayer, or if correspondence was received from the taxpayer, the transfer notification procedures are required. For W&I, refer to the W&I Transfers of Potential Fraud Cases to Austin and Transfer Check Sheet job aids on SERP.

Note: A case cannot be transferred to Area Field Exam if the refund remains frozen. See IRM 4.19.13.16, Transfers to Area Office Examination, or Appeals Office, for additional procedures.

- (2) Interim Letters and Action 61 guidelines apply to fraud cases. See IRM 4.19.13.3.6, Standard 6 -Timely Actions, and IRM 4.19.3.22.1.5, Action 61/ Policy Statement P-21-3.
- (3) When a case is accepted into the Fraud Program, the BCFC/EFC will issue the appropriate letters, following examination procedures in IRM 4.19.13, General Case Development and Resolution and observe suspense periods per IRM 4.19.10.1.7.2, Standard Suspense Periods for Correspondence Examination. Correspondence to the taxpayer should not include the use of the word "fraud", nor similar language.

4.19.10.4.10.1
(01-01-2023)
**Initial Contact Letter
(ICL) and Response
Procedures**

- (1) After initial research has been completed, a Letter 566-S, Initial Contact, will be issued to the taxpayer requesting an explanation of the potential fraud issue. Both the Integrated Data Retrieval System (IDRS) and Report Generating System (RGS) controls will be updated to reflect the ICL status. The table below lists the actions to be taken, based on the taxpayer's response.

| If | Then |
|---|---|
| The taxpayer responds and the information is sufficient to support the taxpayer's position. | <ul style="list-style-type: none"> Close the AIMS record (DC02) using RGS Form 5344, Examination Closing Record and close any IDRS controls. The BCFC/Austin EFC will update the Centralized Campus Fraud Monitoring Workbook to reflect the closing of the case. |
| The taxpayer responds claiming identity theft. | Refer to IRM 4.19.13.28, Campus Exam Identity Theft. |

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| If | Then |
|-------------------------------|---|
| | <ul style="list-style-type: none">The BCFC/Austin EFC should consider a conference with the FEA to discuss subsequent actions. <p>4.19.10.4.12, Third Party Notification Procedures for Campus Fraud Cases.</p> <ul style="list-style-type: none">Update IDRS and RGS controls to reflect the purge status. |
| The taxpayer does not respond | Confer with the FEA and manager and prepare the 30-day package. See IRM 4.19.10.4.10.2, 30-Day Letter Procedures. |

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4.19.10.4.10.2
(01-02-2024)
**30-Day Letter
Procedures**

- (1) The BCFC/Austin EFC will determine if the 30-day letter should be issued based upon the taxpayer’s response, as well as the documented research and any third-party information. See actions to take in the table below.

| If | Then |
|--|--|
| <p>The BCFC/EFC determines a 30-day letter should be issued.</p> | <ul style="list-style-type: none"> • Secure recommendation from FEA on assertion of the civil fraud penalty. • The BCFC/Austin EFC will prepare a 30-day package consisting of: <ol style="list-style-type: none"> a. Overview of the case - similar to 90-day Overview, see examples in Exhibit 4.19.10-4, Form 886-A 90-Day Overview; b. Letter 525;and c. Form 4549, Income Tax Examination Changes. <p>Note: The FEA will assist with the write-up, if needed.</p> • Before issuance of the 30-day letter, the BCFC/Austin EFC group manager will sign off on the case file/ work papers to confirm agreement with the issuance of the 30-day letter including the Civil Fraud Penalty and/or imposition of Ten-Year EITC, CTC/ACTC/ODC, or AOTC Ban by inputting a non-action note on CEAS. See IRM 4.19.10.4.5.3, Supervisory Approval of Penalties and Bans. • The FEA may review the 30-day package prior to issuance to the taxpayer. • Update AIMS and RGS to proper status. • Update the Centralized Campus Fraud Monitoring Workbook. |

| If | Then |
|--|---|
| <p>The BCFC/EFC and the FEA determine the 30-day letter is not yet warranted or that intent has not been established and the case is in ST 17.</p> | <ul style="list-style-type: none"> • The BCFC/Austin EFC will update the Centralized Campus Fraud Monitoring Workbook. • Form 13549 will be annotated and returned to the originating CFC/EFC/FFC /Manager/Lead for feedback purposes. • Update the status on AIMS and RGS. The EFC will update the status to the status prior to ST 17. The BCFC will update to the status prior to ST 38. • The BCFC/ Austin EFC will consider the assertion of the two-Year EITC, CTC/ACTC/ODC, and AOTC Ban, or other penalties. • In W&I, if the case was transferred to Austin, the case will not be returned to originating campus. The case will be sent to Austin Correspondence Exam to continue the examination. • In SB/SE, the BCFC will complete the examination and issue the 30-day letter when applicable. |

- (2) If the case involves a joint return, each spouse's knowledge regarding the examination issues must be addressed and documented in the workpapers. Refer to IRM 25.15, Relief from Joint and Several Liability, if a taxpayer requests innocent spouse relief.
- (3) Based upon the taxpayer's response, further research and development may be required. Refer to IRM 4.19.13.11, Taxpayer Replies, and IRM 4.19.13.30, Campus Exam Closing Actions. The table below lists actions to take, based on the taxpayer's reply:

| If | Then |
|--|--|
| The information does not support the taxpayer's position or only partially supports the taxpayer's position. | <ul style="list-style-type: none"> • Issue follow-up Letter 692-M with Form 4549 and a clear explanation of the issues on Form 886-A or Form 886-H-XXX - (For XXX, refer to list of forms 886-H for specific issues) required or still needed. • Allow the taxpayer time to reply. |
| The information is sufficient to support the taxpayer's position. | <ul style="list-style-type: none"> • See IRM 4.19.13.30, Campus Exam Closing Actions. • Close any IDRS controls. • Update the Centralized Campus Fraud Monitoring Workbook. |
| Taxpayer signs the Form 4549. | <ul style="list-style-type: none"> • See IRM 4.19.13.30, Campus Exam Closing Actions. • Close any IDRS controls. • Update the Centralized Campus Fraud Monitoring Workbook. |
| The taxpayer does not respond and the suspense period expired. | See IRM 4.19.10.4.10.3, 90-Day Procedures. |

4.19.10.4.10.3
(01-01-2023)
90-Day Procedures

- (1) If the 90-day letter (Letter 3219) is to be issued, an overview of the Civil Fraud Penalty must be written and saved as part of the RGS/CEAS case file on Form 886-A (See Exhibit 4.19.10-4, Form 886-A 90-Day Overview). On jointly filed

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Penalty Assertion, for additional information on asserting civil fraud penalties on a joint return.

- (2) An explanation of the Civil Fraud Penalty/Ten-Year EITC, CTC/ACTC/ODC, and AOTC Ban, along with the amount of the penalty, will be included in the Other Information Section of Form 4549.
- (3) The BCFC/Austin EFC will obtain group manager's concurrence with the issuance of the 90-day letter that includes the Civil Fraud Penalty/Ten-Year EITC, CTC/ACTC/ODC, or AOTC Ban.
- (4) The BCFC/Austin EFC, with the assistance of the FEA, will prepare the Form 886-A outlining the Government's alternative position (e.g., the negligence penalty in lieu of the civil fraud penalty).

- (5) Prior to the issuance of the 90-day letter, the letter will be reviewed by the FEA for accuracy.
- (6) If there is a change to the proposed assessment, the BCFC/Austin EFC must obtain supervisory approval for asserting penalties and bans prior to issuing the 90-day letter. See IRM 4.19.10.4.5.3, Supervisory Approval of Penalties and Bans. Counsel review may also be needed. See IRM 4.19.10.4.5.2 Coordination with Counsel .

Note: If a case is sent for Counsel review, the original case file will be forwarded to Area Counsel for approval. A photocopy of the file will be maintained by the referring campus until Area Counsel returns the original file. The case will be updated on IDRS and RGS with designated controls to reflect the 90-day Area Counsel review status.

- (7) The documents that will be saved in the 90-day package include the following:
 - Letter 3219, Notice of Deficiency
 - Form 3198, Special Handling Notice for Examination Case Processing
 - Form 4549, Income Tax Examination Changes
 - Form 5564-A, Notice of Deficiency-Waiver
 - RGS Schedules and worksheets;
 - Explanation of the fraud issue on Form 886-A
 - Explanation of the Civil Fraud Penalty (IRC 6663), the Fraudulent Failure to File penalty (IRC 6651(f)), and/or the Ten-Year EITC (IRC 32(k)(1)), CTC/ACTC/ODC (IRC 24(g)(1)), and AOTC Ban (IRC 25A(b)(4)) on Form 886-A
 - Alternative Position proposed on Form 886-A (e.g., Accuracy Related Penalty(s) (IRC 6662(a)) or Delinquency Penalty (IRC 6651(a))
 - Verification of managerial approval for assertion of penalties or bans (CEAS non-action note or penalty lead sheet)
 - Overview of the case, on Form 886-A
 - Evidence of fraud (altered and/or false documents; original correct documents; notes of conversations with taxpayer; all correspondence received from taxpayer, etc. and
 - Original tax return(s) for the tax year(s) under examination, if requested by Counsel.

4.19.10.4.10.4
(01-01-2024)

Withholding Only Cases

- (1) The following section applies to returns that are referred to the Fraud Program with suspected altered or false Forms W-2 or Forms 1099 with inflated or false withholding amounts.
- (2) Refer to Penalty Handbook IRM 20.1.5.3.1 , Definitions, for what constitutes an underpayment. See IRM 20.1.5 , Return Related Penalties, Exhibit 20.1.5-1, Calculation of Underpayment Penalty, for an example of a calculation of an underpayment. Per IRC 6664(a) and Treas. Reg. 1.6664-2(a), an underpayment is defined as the amount by which any tax imposed, exceeds the excess of:
 - a. The sum of the amount of tax shown on the return, plus
 - b. Amounts not shown that were previously assessed (or collected without assessment), over the amount of rebates made.

Note: In calculating the amount of an underpayment, adjustments to refundable credits or prepayment credits for withholding or estimated

tax are included in the amount shown as the tax on the taxpayer's return. In a Program Manager Technical Advice, issued on May 30, 2012, https://www.irs.gov/pub/irao/pmta_2012-16.pdf, the Office of Chief Counsel reconsidered its previous advice regarding the application of the accuracy-related penalty in the situation where the IRS does not approve or pay a refund for a refundable credit the taxpayer is not entitled to. "In many cases involving this fact pattern, there will be no 'underpayment', as that term is defined in IRC 6664. Without an underpayment there can be no liability for the accuracy-related penalty."

- (3) Follow third-party procedures to substantiate or negate the potential fraud document that the information provided by the taxpayer is fraudulent. For additional information, see IRM 4.19.10.4.12, Third Party Notification Procedures for Campus Fraud Cases.
- (4) Refer to IRM 4.8.9.18.9, Notices with Prepayment Credit Adjustments, for assessment procedures. The assessment for the over claimed withholding must be made prior to issuance of the 90-Day Letter, by inputting a TC 290 adjustment for the amount of the overstated withholding. Inform the taxpayer that disallowance of the withholding credit is not subject to deficiency procedures. A TC 290 results in a legal assessment that allows the IRS to correct the overstated credits using the provisions of IRC 6201(a)(3). The assessment amount should not include any amount of income tax withholding actually withheld from the taxpayer's wages. The IRS only makes this assessment for amounts of erroneous withholding claimed by the taxpayer on the return. The TC 290 requirement is further detailed in IRM 3.14.1.6.7.2, Category B ERRF Resolution, and IRM 21.4.5.5, Erroneous Refund Categories and Procedures.
- (5) Upon manager review and concurrence of the civil fraud penalty assertion, update the work papers with the following: BCFC/EFC determined that since the only adjustment on this case is regarding withholding, IRM 4.8.9.18.9, Notices with Prepayment Credit Adjustments, will be followed.
- (6) To compute the penalty, follow the guidelines below. Refer to IRM 4.8.9.19, Special Cases, for additional information:
 - a. Run tax computation as though no special circumstances exist and notate Civil Fraud and Delinquency Penalty amounts.
 - b. Edit issues to remove the Civil Fraud Penalty.
 - c. On all issues other than withholding, both fraud and non-fraud, adjust the "per Exam" amount to eliminate the adjustment amount.
 - d. If return was subject to the Delinquency Penalty, access "return related penalties" and un-check the "delinquent return and delinquency" boxes (be sure to notate figures in Failure to Pay (FTP)/Failure to File (FTF) fields).
 - e. Run another tax computation and verify that the only balance due is the withholding issue and that no Civil Fraud or Delinquency Penalties (if applicable) are present.
 - f. Run Form 5344, Examination Closing Record, to generate a TC 300 for zero with a TC 807 to reduce the withholding, use DC 08 and leave the agreement date blank (until known). Per IRM 4.8.9, Statutory Notices of Deficiency, attach a Form 3198 and Form 4549. When preparing the Form 4549 to attach, in the tax computation window, clear the other infor-

- mation section and if there is a Delinquency Penalty involved, un-check the "6406(g) box" so the automatic paragraph does not generate.
- g. Once the approval to issue the 90-day Letter is received from Counsel, re-input the proper Exam amount in each of the issues and in the withholding issue, make the Exam amount the "per return" amount so there is no adjustment amount.
 - h. For delinquent returns, access "return related penalties" and re-check the "delinquent return and delinquency" boxes and re-input the figures, notated earlier, in the FTP/FTF fields.
 - i. Create the Civil Fraud Penalty manually in "return related penalties" and create a Form 886-A to show the computation of the Civil Fraud Penalty.
 - j. In Tax Computation/Other Information box, type the following: "Please note that the overstated federal withholding has been reduced by \$-----.00. Your account was adjusted on Month, Day, Year. It has been determined that this adjustment was due to fraud. Consequently, a penalty in an amount equal to 75% of such overstated Federal withholding has been asserted pursuant to IRC 6663. The amount of the penalty is \$-----.00 and is reflected in this notice. The penalty asserted in this notice is the only issue subject to appeal rights. The additional balance due for the federal withholding adjustment will be issued under separate cover."
 - k. If withholding is the only issue, interest will not compute on the Civil Fraud Penalty and must be manually computed. This is done by using Total Interest/Estimated Interest option on the RGS tree. Click on the tax period. Input the amount of the Civil Fraud Penalty, beginning date and ending date. Click "+/-" to compute.
 - l. Run the Form 4549 and save it to case file documents. If interest has been computed manually, changes have to be made to the adobe file (to add the manually computed interest) as follows: Tools/Advanced Editing/Text Field Tool/double click in the area to be edited/pop up window, select the General Tab, un-check the read only box, close, click on the "hand" tool on the tool bar/change the fields.
 - m. If withholding is the only issue, a "How to pay your taxes" page must be edited from a previously generated Form 4549 to correct the date (this page does not generate when there is no deficiency in tax being asserted on the new notice).
 - n. Once the manager has approved the 90-day letter, the adjustment for the over claimed withholding will be input and the 90-day letter will be issued only for the Civil Fraud Penalty. Include an explanation that the withholding adjustment has already been made to the account and a notice is being provided to advise them of their appeal rights regarding the Civil Fraud Penalty.
- Note:** Per IRM 4.8.9.18.9, Notices with Prepayment Credit Adjustments, the assessment for the over claimed withholding must be made prior to the issuance of the 90-day letter. Once the adjustment is made, the 90-day letter will be issued only for the Civil Fraud Penalty. The IRM also provides instruction for reducing the over claimed withholding.
- o. When the case is returned as approved by the manager, re-compute the interest to the expiration date of the notice and re-print the interest report. The Form 4549 will have to be manually updated to include the revised interest amounts.

4.19.10.4.11
(01-01-2014)
Statute Consideration

- (1) General assessment period - The normal assessment statute expiration date (ASED) is three years from the due date or three years from the date the original (valid) return was filed, whichever is later. See IRC 6501(a).
- (2) Special assessment periods:
 - a. Fraudulent return - There is no period of limitations on assessment for a false or fraudulent return with intent to evade tax. See IRC 6501(c).
 - b. 25 percent Omission - The period of limitations is extended to six years, if the taxpayer omits:

More than 25 percent of the gross income reported on the original income tax return;

More than 25 percent of the tax reported on the original excise tax return; or

Includable items in excess of 25 percent of the gross estate reported on the original estate tax return. See IRC 6501(e).

- (3) See IRM 25.6, Statute of Limitations, for the procedures used to control the ASED.

4.19.10.4.12
(01-02-2023)
**Third Party Notification
Procedures for Campus
Fraud Cases**

- (1) Effective 8/15/19, Publication 1, Your Rights as a Taxpayer, will no longer satisfy the advance notice requirement of IRC 7602(c)(1).
- (2) Effective after 8/15/19, the Taxpayer First Act impacts third-party contact notice procedures. Section 1206 of the Taxpayer First Act amended IRC 7602(c)(1) (advance notice provision). The IRS is now required to:
 - Issue notice of the intent to make third-party contacts;
 - Intend, at the time such notice is issued, to contact third parties (the notice must state this intent);
 - Specify the time period in the notice (not to exceed one year) in which the IRS will be making the contact; and
 - Send the notice at least 45 days in advance of contact with a third party.
- (3) For pre-notification of third-party contact, campuses will send Letter 3164-E, (Exam 1) Third Party Contact. A copy of the Letter 3164-E must be saved to the RGS case file folder.
- (4) The Letter 3164-E notification takes effect in 45 days from the date of the letter and remains valid for one year, from the 46th day.
- (5) No contact with the third-party should be initiated before the 46th day after the date of the Letter 3164-E.
- (6) If additional third-party contact is needed after the expiration of the original contact period, a new Letter 3164-E must be issued.
- (7) Other provisions of IRC 7602(c)(1) are unchanged and require the IRS to:
 - Record all third-party contacts.
 - Provide a list of third-party contacts to the taxpayer, on request.
- (8) For procedures relating to third-party contact, refer to:

- IRM 25.27.1, Third-Party Contact Program.
- IRM 4.11.57, Third Party Contacts.

4.19.10.4.13
(01-01-2023)

Ten-Year Earned Income Tax Credit (EITC), Child Tax Credit (CTC)/Additional Child Tax Credit (ACTC)/Credit for Other Dependents (ODC), and American Opportunity Tax Credit (AOTC) Ban Procedures

- (1) The Internal Revenue Code (IRC) provides that no EITC, and for tax years after 2015, CTC/ACTC or AOTC shall be allowed for a period of ten years after the most recent taxable year for which there was a final determination that the taxpayer's claim of the credit was due to fraud. The Credit for Other Dependents (ODC) is added for tax years 2018 - 2025. See:
 - IRC 32(k)(1)(B)(i) for EITC.
 - IRC 24(g)(1)(B)(i) for CTC/ACTC/ODC.
 - IRC 25A(b)(4)(A)(ii)(I) for AOTC.
- (2) The BCFC/Austin EFC will secure the FEA's recommendation to impose the ten-year EITC, CTC/ACTC/ODC, or AOTC Ban(s) on the Form 13549, Campus Fraud Lead Sheet. The BCFC/Austin EFC will complete the form and electronically send it to the FEA. The FEA will complete Section VII, Fraud Indicators and Developmental Actions, indicating "Assert CFP/FFTFP (Fraudulent Failure to File Penalty), impose Ten-Year EITC, CTC/ACTC/ODC, or AOTC Ban(s)" and electronically return the form to the CFC/Austin EFC.
- (3) The case file must contain sufficient write-up and documentary evidence needed to prove the affirmative acts of fraud.
- (4) When fraud is established, both the CFP and the ten-year ban normally apply. However, there are instances when the CFP does not apply. Prior to assertion of the ten-year EITC, CTC/ACTC/ODC, or AOTC Bans without the Civil Fraud Penalty, agreement must be secured from the FEA.
- (5) If the FFC or BCFC/Austin EFC determine that the disallowance of the EITC, CTC/ACTC/ODC, or AOTC was not due to fraud, but instead a result of the taxpayer's reckless and intentional disregard of the rules and regulations, the two-year EITC, CTC/ACTC/ODC, or AOTC ban(s) and negligence penalty should be considered. See IRM 4.19.14.7.1, 2/10 Year Ban - Correspondence Guidelines for Examination Technicians (CET), for information related to the two-year ban.
- (6) Priority Code 6 must be input on Form 5344, Examination Closing Record, to impose the ten-year ban for EITC. If an "A" freeze is present on the account, the examiner must use a priority code 7.
- (7) Priority codes are not required to assert the ten-year ban for CTC/ACTC/ODC or AOTC. When the CTC/ACTC/ODC, and/or AOTC issue is disallowed in RGS, a recertification code is systemically generated by RGS on the 5344. To assert the ten-year ban, the examiner must overwrite the recertification code with the appropriate reason code:
 - Reason Code 183 to set the ten-year ban for CTC/ACTC/ODC.
 - Reason Code 180 to set the ten-year ban for AOTC.
- (8) For more information on the two and ten year bans, refer to IRM 4.19.14.7.1, 2/10 Year Ban - Correspondence Guidelines for Examination Technicians (CET) and the Penalty Handbook IRM 20.1.5.3.5, Two and Ten Year Bans on Claiming the Earned Income Tax Credit (EITC), Child Tax Credit (CTC), Additional Child Tax Credit (ACTC), and American Opportunity Tax Credit (AOTC).

4.19.10.5
(01-02-2024)
**Questionable Refund
Program (QRP)**

- (1) Return Integrity Verification Operations (RIVO) identifies potentially false returns claiming questionable income, withholding, and refundable credits. For more detail, see IRM 25.25 , Revenue Protection.
- (2) See IRM 4.19.10.4.2, Responsibilities of the Correspondence Examination Technicians (CET) and the Tax Examiners (TE), procedures to report questionable returns that indicate any multiple and/or fraudulent refund schemes discovered during classification/screening to the Campus Fraud Coordinator (CFC).

4.19.10.6
(01-01-2024)
**Potential Return
Preparer Scheme
Identification**

- (1) Return preparer schemes may be identified within any Examination Operation workload and by any method (i.e., correspondence examination, classification, etc.).
- (2) A return preparer scheme may be identified by a suspected pattern of non-compliant issues which have similar characteristics and appear on three or more original tax returns or amended returns.
 - a. **Example One:** When classifying Form 1040-X, Amended U.S. Individual Income Tax Returns, the same language appears on Page 2, Section III, Explanation of Changes, on three or more amended returns. The explanation for the issue/tax change is suspect or egregious and the impact on tax may be large or small.
 - b. **Example Two:** Three or more taxpayers have been examined and adjusted by Correspondence Examination, whose original tax returns have been completed by the same preparer. The examination revealed the same types of deductions, expenses or credits with similar dollar amounts were claimed by all or most of the taxpayers and/or similar/same documents were provided by the taxpayers as substantiation.
- (3) Preparer Scheme Referral Process
 - a. The examiner will prepare Form 13549, Campus Fraud Lead Sheet, Section III and include the details listed in the table below and then forward to the CFC/EFC, as applicable, for consideration.

| Information to provide |
|---|
| <ul style="list-style-type: none"> • Preparer name and/or business name, • Preparer TIN and/or EIN, • Scheme issues identified, • Affected Tax Years, • Any statute of limitations (SOL/ASED) concerns, • Number of open/in-process taxpayer cases, • Adjusted Gross Income (AGI) of each open/in-process case, • Number of closed taxpayer cases, • Examination results (Dollars/Hour and Dollars/Return), • Project Code and Source Code from which the affected returns generated, if known, • Provide remarks/comments/additional information which establishes the non-compliant or negligent behavior of the preparer. |

- b. The CFC/EFC will perform additional research including: RPVUE information on the preparer, Accurant, and checking the Electronic Fraud Detection system (EFDS)/Workload Management System (WMS) (if available) for related schemes
 - c. The CFC/EFC will review the preparer scheme documentation to determine if the information warrants referral.
- (4) If the W&I EFC determines the preparer scheme has merit for further development, they will:
 - a. Send the referral to the Lead Development Center (LDC). The LDC will coordinate with other specialty offices to ensure there is no overlap.
 - b. Copy the fraud program W&I HQ Analyst on the referral.
- (5) If the SB/SE CFC determines the preparer scheme has merit for further development they will:
 - a. Forward the Form 13549, Campus Fraud Lead Sheet, to the SB/SE HQ Analyst responsible for the Fraud Program.
 - b. Contact the FEA, if the non-compliant behavior is egregious or preparer misrepresentation is obvious. If the FEA recommends contacting the Return Preparer Coordinator (RPC), the CFC will complete Form 14719, SBSE Return Preparer Referral, and email the referral to the appropriate Area RPC.

Note: The CFC in any SB/SE Campus can send the Form 14719 to the RPC. It does not need to be sent to Brookhaven. Reminder, the RPC does not conduct the audit. The examination will continue in the campus.
- (6) In SB/SE, the HQ Analyst will review the Form 13549 and:
 - a. Present the information of the potential preparer scheme to the Examination Case Selection group (ECS), and the Case Workload Identification (CWI) analysts, if appropriate.
 - b. Make a referral to the Lead Development Center, using Form 14242, Reporting Abusive Tax Promotions and/or Preparers, if the preparer activities are a significant dollar loss to the government or abusive tax transactions are suspected. Email the referral to the *LDC mailbox, for return preparer penalty and injunction consideration.
- (7) The CFC/EFC should consult the FEA if a criminal referral appears warranted. If the FEA agrees, submit Form 2797, Referral Report of Potential Criminal Fraud Cases, to CI.

4.19.10.6.1
(01-02-2024)
**Return Preparer
Penalties**

- (1) Generally, Campus Examination Operation personnel do not develop or assert penalties against tax return preparers. However, there may be instances where campus employees may be directed to do so. In that event, the following information and procedures will apply.
- (2) Any person who prepares a tax return or claim for refund for compensation or who employs one or more persons to prepare for compensation, any return of tax, or claim for refund is a tax return preparer.
- (3) IRM 20.1, Penalty Handbook, is the primary source of authority for civil penalty administration by the Internal Revenue Service. IRM 20.1.6, Preparer and

Promoter Penalties, provides servicewide policy for the administration of tax return preparer penalties and promoter penalties.

- (4) A penalty is charged for understating a taxpayer's tax liability when the understatement was due to willfulness or any reckless or intentional disregard of rules and regulations. See IRM 20.1.6.4, IRC 6694 Understatement of Taxpayer's Liability by Tax Return Preparer.
- (5) For other tax return preparer penalties, see IRM 20.1.6.5, IRC 6695 Penalties That May Apply to a Tax Return Preparer.
- (6) All documentation to support assertion of the penalty must be uploaded to the RGS case file.
- (7) SB/SE can refer penalty cases to the Return Preparer Penalty Working Group (RPPWG) for developing and proposing return preparer penalties under IRC 6694 and IRC 6695. See IRM 20.1.6.2.1, Optional Penalty Case Referral to Return Preparer Penalty Working Group (RPPWG).
- (8) Examiners will flag cases where there are indications of possible income tax preparer violations by use of Form 3198, Special Handling Notice for Examination Case Processing, and forward to the Examination Return Preparer Coordinator (RPC) for review and forwarding to Area Office RPCs.

4.19.10.6.2
(01-02-2024)
Office of Professional Responsibility

- (1) The Office of Professional Responsibility (OPR) establishes, communicates, and enforces the rules of professional conduct applicable to tax professionals as defined by Treasury Department Circular 230. The OPR may propose disciplinary action against a practitioner for noncompliance issues associated with their personal or business tax returns.
- (2) IRS employees have an obligation to report apparent tax practitioner (e.g., attorney, enrolled agent, certified public accountant) misconduct to the OPR.
- (3) For more information on tax practitioner misconduct and how to make a referral to the OPR, go to: [https://irs.gov.sharepoint.com/sites/OPR/SitePages/Doing-your-diligence-Refer-to-the-OPR-practitioners-who-aren't-diligent\(1\).aspx](https://irs.gov/sharepoint.com/sites/OPR/SitePages/Doing-your-diligence-Refer-to-the-OPR-practitioners-who-aren't-diligent(1).aspx).

4.19.10.7
(01-01-2011)
Master File Tax (MFT) Code 31

- (1) In January 2001, a Master File process was implemented to allow for the processing of a split spousal account on the Master File rather than creating and subsequently posting the account to the Non-Master File (NMF). These adjustments often result from Innocent Spouse, Offer-In-Compromise, Petitioning/Non-Petitioning, Restitution-based, and Bankruptcy issues. The split account will appear as an MFT 31 module on IDRS as well as the Master File and will be "linked" to the MFT 30 account.
- (2) See IRM 25.15.15, Mirror Modules for Requests for Relief from Joint and Several Liability, for procedures on creating an MFT 31 account for an Innocent Spouse Case. For instructions on establishing MFT 31 accounts for petitioning and non-petitioning spouses for Exam audits, refer to IRM 21.6.8, Split Spousal Assessments (MFT 31/MFT 65).
- (3) Refer to IRM 4.19.13.22.1, Bankruptcy Procedures - Examination Bankruptcy Coordinator Instructions, for instances when a MFT 31 should be created on bankruptcy modules.

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Exhibit 4.19.10-1 (03-23-2021)
Campus Fraud Lead Sheet

The Form 13549, Campus Fraud Lead Sheet, is used for Campus fraud referrals.

Secure email must be used to transfer the Form 13549 between functions.

Instructions for filling out the form, by function, can be accessed using the link under "Other Related Resources" from the Campus Fraud Development Process page on IRS Knowledge Management at <https://portal.ds.irsnet.gov/sites/vl019/lists/campusfrauddevelopment/landingview.aspx>.

Exhibit 4.19.10-2 (03-23-2021)

W&I PSP Fraud Memo

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
ATLANTA, GA 30308

WAGE AND INVESTMENT DIVISION

MEMORANDUM FOR : Territory Manager, Planning and Special Programs
_____ Area Office

FROM: Operations Manager, Examination
_____ Campus

SUBJECT: Fraud Lead

The attached case has considerable fraud potential and is being referred to the Area Office on the joint recommendation of the Fraud Enforcement Advisor (FEA) and the Exam Fraud Coordinator (EFC).

Please ensure that any subsequent, prior, or related returns that are selected for examination/fraud development reflect the appropriate project code for campus referred fraud leads:

- PC 0076 non-EITC cases (Discretionary), or
- PC 0691 EITC cases.

We have mandatory taxpayer notification requirements. To meet these, we are requesting your response indicating acceptance or rejection of this case(s) within 10 workdays (2 weeks). If it is determined that the case will **not** be selected for examination, please return it to the _____ Campus EFC. If there are any questions regarding the case, please contact, _____, EFC (____)-____-_____.

/s/

Attachments:
Case file (includes Form 13549)
Form 3185
Form 3210

Exhibit 4.19.10-3 (03-23-2021)

SB/SE PSP Fraud Memo



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, DC 20224

SMALL BUSINESS/SELF-EMPLOYED DIVISION

MEMORANDUM FOR : Territory Manager, Planning and Special Programs
_____ Area Office

FROM: Operations Manager, Examination
_____ Campus

SUBJECT: Fraud Lead

The attached case has considerable fraud potential and is being referred to the Area Office on the joint recommendation of the Fraud Enforcement Advisor (FEA) and the Campus Fraud Coordinator (CFC).

Please ensure that any subsequent, prior, or related returns that are selected for examination/fraud development reflect the appropriate project code for campus referred fraud leads:

- PC 0076 non-EITC cases (Discretionary), or
- PC 0691 EITC cases.

We have mandatory taxpayer notification requirements. To meet these, we are requesting your response indicating acceptance or rejection of this case(s) within 10 workdays (2 weeks). If it is determined that the case will **not** be selected for examination, please return it to the _____ Campus CFC. If there are any questions regarding the case, please contact, _____, CFC (____)-____-_____.

/s/

Attachments:
Case file (includes Form 13549)
Form 3185
Form 3210

Exhibit 4.19.10-4 (01-01-2023)
Form 886-A 90-Day Overview

The following examples explain the nature of fraudulent information received from a taxpayer under audit. The overview is used with the 90-Day letter. The names shown in the examples are fictitious, chosen at random from the Category Lists of Names for Fictionalizing Taxpayer Names and Addresses. Any references to attachments or documents are for illustrative purposes only.

EXAMPLES OF AN OVERVIEW TO BE USED WITH 90-DAY LETTER:**OVERVIEW EXAMPLE 1**

Mary Dove (taxpayer) submitted altered and fictitious documents as support for Earned Income Tax Credit (EITC), Child Tax Credit (CTC), Head of Household (HOH) filing status and dependency exemptions for the 2017 tax year.

ISSUE:

Is assertion of the Civil Fraud Penalty under Internal Revenue Code (IRC) section 6663 applicable?

FACTS:

The taxpayer provided correspondence dated March 30, 2019, as support for EITC, CTC, HOH filing status, and dependency exemptions claimed on the 2017 Federal income tax return. The correspondence consisted of the following:

1. A birth certificate (Exhibit 1) for Baby Mary Dove (XXX-XX-2345) D/O/B June 13, 2004; the mother listed on this form was Mary Dove, which appears to have been altered. Internal research identifies Mary Sparrow as the mother of Baby Mary Dove.
2. A letter from the New York City Human Resources Administration Administrator/Commissioner that appeared to be altered (Exhibit 2). Third party contact was made to verify the validity of the statement. Mr. R. J. Falcon responded (Exhibit 3) by indicating the letter was a forgery based on the fact that the Commissioner does not respond to individual requests and HRA uses a regular font as opposed to various types of font on all business correspondence.
3. A letter from T.J. Eagle, M.D.P.C. dated 03/24/2019 that appears to have been altered (Exhibit 4). Third party contact was made with the office of Dr. Eagle, requesting authentication of the letter submitted by the taxpayer. Dr. Eagle responded via fax dated July 7, 2019 (Exhibit 5). Dr. Eagle's fax states that Baby Mary Dove was a patient in 2013, but there was no record of the child being seen between 2014 and 2018. Dr. Eagle also indicated that the letterhead used was not the official office letterhead and the stamp at the bottom of the letter had not been used since 2013. Additionally, Dr. Eagle verified that the person who signed the letter stopped working in the office in 2013.
4. A letter from the New York City Housing Authority along with a transcript of rent history (Exhibit 6) that appears to be altered. Third party contact was made to Jane Swan, assistant manager of the department, requesting verification of the validity of the letter and the transcript of rent history. A response was received via fax on August 10, 2019 (Exhibit 7), stating that the documentation was not from their department. Jane Swan stated that the housing official who signed the letter had been transferred to another location in 2013. Moreover, the address shown on the letter is not the correct address; there is no record of Mary Dove or Baby Mary Dove residing within the development; the letterhead used is not the City Housing Authority's letterhead and the stamp used at the bottom of the letter is not the stamp used by their office. The ledger submitted by Mary Dove was also determined to be false because the transcripts issued by the department prints the date as well as time in military format. The transcript received did not include this feature.

LAW:

In order for the civil fraud penalty to be asserted pursuant to IRC 6663, the government must prove by clear and convincing evidence that: (1) there was an underpayment of tax due for the year at issue; and (2) at least a portion of that underpayment is attributable to fraud. Also, the taxpayer will be banned from claiming EITC for ten years if the EITC adjustment was due to fraud (IRC 7454(a); Rule 142(b)).

Exhibit 4.19.10-4 (Cont. 1) (01-01-2023)
Form 886-A 90-Day Overview**1. Underpayment of Tax:**

In this case, there is an underpayment of tax due for the 2017 tax year. The underpayment of tax is attributable to the taxpayer's ineligibility to claim EITC, the CTC, the dependency exemption, and HOH filing status.

2. Fraud:

To prove fraud, the Government must show the taxpayer(s) intent to evade taxes, known to be due and owing. The Government must produce some affirmative act (action to mislead or conceal) of fraud.

The existence of fraud is a question of fact to be resolved upon consideration of the entire record. Since direct proof of taxpayer intent is rarely available, fraud may be proven by circumstantial evidence that will support a finding of fraudulent intent. Also, proof of fraud for one year will not sustain the Government's burden of proving fraud in another year.

In this case, both oral and written testimony from third parties confirm the taxpayer is not eligible to claim EITC, CTC, the dependency exemption, and HOH filing status. The act of altering and falsifying documentation to achieve these tax benefits and/or refundable credits has established the taxpayer's intent to avoid the correct reporting of tax liability.

ARGUMENT:

The Government has proven that clear and convincing evidence of fraud exists based upon the fact that:

1. Mary Dove did not establish being the natural parent of Baby Mary Dove.
2. Mary Dove did not provide a residence for more than 6 months of the tax year for Baby Mary Dove.
3. Mary Dove did not provide financial support for Baby Mary Dove.
4. Mary Dove submitted falsified documentation to qualify for tax benefits and refundable credits that was not entitled to claimed. Mary Dove committed affirmative acts of fraud by presenting altered/ falsified documentation which demonstrated an intent to deceive the government.

TAXPAYER'S POSITION:

Unknown. The taxpayer failed to respond to a request for information regarding the documentation received on March 30, 2019.

GOVERNMENT'S POSITION:

The taxpayer has not provided a defense to the application of this penalty. Thus, assertion of the civil fraud penalty and imposition of the Ten-Year EITC Ban is in order.

CULPABILITY OF EACH SPOUSE:

Address on jointly filed returns, address the culpability of each spouse. "As questioned in the 30-Day Letter, the culpability of each spouse could not be determined as neither responded." On all other returns, annotate "Not applicable, taxpayer did not file a joint return."

CONCLUSION:

As stated in the above analysis, clear and convincing evidence of fraud is due to the fact that:

1. There was an underpayment of tax due for the taxable year at issue;
2. At least a portion of the underpayment is attributable to fraud; and
3. The EITC adjustment was due to fraud.

Thus, assertion of the Civil Fraud Penalty under IRC 6663 and imposition of the ten-year EITC ban under IRC 32(k) are applicable.

Exhibit 4.19.10-4 (Cont. 2) (01-01-2023)
Form 886-A 90-Day Overview**ALTERNATIVE POSITION:**

(Include following paragraph on all cases) In the alternative, it has been determined that the underpayment of tax (\$_____) for the 2017 tax year is due to negligence or disregard of rules and regulations. Thus, the 20% accuracy related penalty is being asserted under the provisions of IRC 6662(b)(1).

(Include following paragraph if EITC and CTC is involved) In the alternative, the underpayment constitutes a substantial understatement of income tax under the provision of IRC 6662(b)(2). Thus, the two-year EITC and CTC ban is being imposed under the provision of IRC 32(k). The two-year ban will prohibit you from claiming EITC and CTC for the next two years.

OVERVIEW EXAMPLE 2

Mr. Hickory (taxpayer) attached an altered Form W-2 to his filed 2019 Form 1040. He fraudulently changed the federal withholding tax amount to understate the tax due and reduce the tax liability.

ISSUE:

Is the imposition of the civil fraud penalty, as an addition to the tax, pursuant to Internal Revenue Code (IRC) 6663 applicable?

FACTS:

- Mr. Hickory prepared and filed his 2019 Form 1040 and attached an altered Form W-2 from Balsam Hill, Inc. to his return. The amount of the withholding on the form was changed to \$20,000. Mr. Hickory included this amount on line 17 of his filed 2019 Form 1040.
- Payer data reported by Balsam Hill, Inc. to the IRS, per the enclosed IRPTR, shows Mr. Hickory's federal withholding for tax year (TY) 2019 to be \$2,000.
- Letter 3164-E, (Exam-1) Third Party Contact, was sent to Mr. Hickory, advising of third-party contact.
- Form 12175, Third-Party Contact Report Form, was filled out and forwarded to the Campus Third-Party Contact Coordinator for recordation of third-party contact to the payer involved.
- On June 30, 2020, the Internal Revenue Service (IRS) contacted Balsam Hill, Inc. and requested a copy of the Form W-2 issued to Mr. Hickory for TY 2019.
- The IRS received the Form W-2 copy from Balsam Hill, Inc. on July 16, 2020. The copy showed a federal income tax withholding amount of \$2,000, in agreement with IRPTR.
- On July 26, 2020, the IRS issued a 30-day letter to Mr. Hickory notifying that Balsam Hill, Inc. had verified an amount of \$2,000 in federal income tax withholding for TY 2019.
- Mr. Hickory did not respond to the letter.

LAW:

In order for the civil fraud penalty to be imposed pursuant to IRC 6663, the government must prove by clear and convincing evidence that: (1) there was an underpayment of tax due for the year at issue, and (2) at least a portion of that underpayment was attributed to fraud.

1. Underpayment of Tax:

There is an underpayment of income tax due from Mr. Hickory in TY 2019 due to the altered amount of federal withholding. The federal withholding tax on line 17 of the Form 1040 should have shown \$2,000 instead of \$20,000.

2. Fraud:

To prove fraud the government must show the taxpayer intended to evade taxes he knew to be due and owing, by conduct intended to conceal or mislead. The government must produce some affirmative indication of the required specific intent. If the understatement of tax is caused by a good faith misunderstanding of the tax laws, the understatement is not due to fraud. However, a good faith misunderstanding of the law is different than disagreement with the law or a belief that the law is, or may be, unconstitutional.

The existence of fraud is a question of fact to be resolved upon consideration of the entire record.

Exhibit 4.19.10-4 (Cont. 3) (01-01-2023)
Form 886-A 90-Day Overview

Since direct proof of taxpayer intent is rarely available, fraud may be proved by circumstantial evidence that will support a finding of fraudulent intent. Proof of fraud for one year will not sustain the government's burden of proving fraud in another year.

ARGUMENT:

The government has determined that clear and convincing evidence exists. Mr. Hickory altered the amount of the federal income tax withholding on the Form W-2 that he submitted with his TY 2019 Form 1040 to understate the tax due.

TAXPAYER'S POSITION:

Unknown. The taxpayer failed to respond.

GOVERNMENT'S POSITION:

The taxpayer has not provided a defense to the application of this penalty. The assertion of the civil fraud penalty is in order.

CULPABILITY OF EACH SPOUSE:

Not applicable. Taxpayer did not file a joint return.

ALTERNATIVE POSITION:

In the alternative, if it is determined that the underpayment of tax in the amount of \$_____ for the TY ending 2019 is not due to fraud, then it is determined that the underpayment of tax in the amount of \$_____ is due to negligence or disregard of rules and regulations under IRC Section 6662(b)(1) of the Internal Revenue code, or the underpayment constitutes a substantial understatement of income tax under the provision of IRC Section 6662(b)(2).

