



MANUAL TRANSMITTAL

Department of the Treasury
Internal Revenue Service

4.23.3

FEBRUARY 25, 2021

EFFECTIVE DATE

(02-25-2021)

PURPOSE

- (1) This transmits renamed and revised IRM 4.23.3, Employment Tax - Examination Programs and Examination Planning Procedures.

MATERIAL CHANGES

- (1) IRM 4.23.3.1.6. Fraud Technical Advisor (and related acronym FTA) and replaced with the definition Fraud Enforcement Advisor and acronym FEA.
- (2) IRM 4.23.3.1.7. Additional information added for TAS and Disclosure.
- (3) IRM 4.23.3.3.1. Expanded listing of information documents reporting federal tax withholding.
- (4) IRM 4.23.3.3.6.1.1. New subsection, Research Credit Referrals to Income Tax. This subsection provides guidance to employment tax examiners on referring a case to Income Tax.
- (5) IRM 4.23.3.4. Renamed, Selection Criteria for Large Cases Referrals. Cross-reference provided to IRM 4.23.4.5 for specific guidance related to large case procedure. Deleted (2).
- (6) IRM 4.23.3.6.1. New subsection, Pre-Contact Analysis. All subsequent subsections renumbered.

Old IRM	Revised IRM
4.23.3.6	4.23.3.6
New	4.23.3.6.1 Pre-Contact Analysis
4.23.3.6.1	4.23.3.6.2
4.23.3.6.2	4.23.3.6.3
4.23.3.6.2.1	4.23.3.6.3.1
4.23.3.6.2.2	4.23.3.6.3.2
4.23.3.6.2.2.1	4.23.3.6.3.2.1
4.23.3.6.2.3	4.23.3.6.3.3
4.23.3.6.2.3.1	4.23.3.6.3.3.1
4.23.3.6.3	4.23.3.6.4 Name change to Scheduling the Initial Appointment
New	4.23.3.6.4.1 Scheduling the Initial Appointment LB&I Team Audits
New	4.23.3.6.4.2. Examination of Prior and Subsequent Returns
4.23.3.6.4	4.23.3.6.5

Old IRM	Revised IRM
4.23.3.6.5	4.23.3.6.6
New	4.23.3.6.6.1 Third-Party Contacts
4.23.3.6.6	4.23.3.6.7
4.23.3.6.6.1	4.23.3.6.7.1
4.23.3.6.6.2	4.23.3.6.7.2
4.23.3.6.6.3	4.23.3.6.7.3
4.23.3.6.7	4.23.3.6.8
4.23.3.6.8	4.23.3.6.9
4.23.3.6.9	4.23.3.6.10

- (7) IRM 4.23.3.6.3.3.1(2). Form 5345-D instructions modified to reflect revision to form. Reference to Coordinated Industry Cases (CIC) replaced with Large Corporate Compliance cases (LCC).
- (8) IRM 4.23.3.6.4(3). Deleted. See IRM 4.23.3.6.4.1.
- (9) IRM 4.23.3.6.4.1. New subsection, Scheduling the Appointment LB&I Team Audits. Introduces new Letter 3850-A, Employment Tax Examination Notification, to notify a taxpayer that the employment tax returns have been opened for examination.
- (10) IRM 4.23.3.6.4.2. New subsection, Examination of Prior and Subsequent Returns, providing guidance on follow-up appointments.
- (11) IRM 4.23.3.6.6.1. New subsection, Third-Party Contacts. The purpose of this subsection is to provide guidance to IRS employees who intend to contact third parties in connection with the determination or collection of a tax liability of a taxpayer.
- (12) Editorial and technical changes have been made throughout this section.

EFFECT ON OTHER DOCUMENTS

This material supersedes IRM 4.23.3 dated November 11, 2018. This IRM incorporates SBSE-04-0719-0034, Interim Guidance on Third-Party Contact Notification Procedures, issued July 26, 2019.

AUDIENCE

All Large Business & International (LB&I), Tax Exempt/Government Entities (TE/GE), and Small Business/Self Employed (SB/SE) employees dealing with employment tax issues.

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 Small Business/ Self-Employed Division

4.23.3

Employment Tax - Examination Programs and Examination Planning Procedures

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- 4.23.3-1 Guidelines for Evaluation of Referrals and Income Tax Returns

4.23.3.1
(11-19-2018)
Program Scope and Objectives

- (1) **Purpose:** This section describes employment tax general procedures and describes various programs for selected employment tax issues.
- (2) **Audience:** This section contains instructions and guidelines for all Large Business & International (LB&I), Tax Exempt/Government Entities (TE/GE), and Small Business/Self-Employed (SB/SE) employees dealing with employment tax issues.
- (3) **Policy Owner:** Director, Specialty Examination Policy of the Small Business/Self-Employed Division.
- (4) **Program Owner:** Program Manager - Employment Tax Policy. The mission of Employment Tax Policy is to establish effective policies and procedures to support compliance with employment tax laws.
- (5) **Primary Stakeholders:**
 - Employment Tax – Workload Selection and Delivery (SE:S-DCE:HQ:ECS:S:ETEGCS:EWSD)
 - Specialty Examination - Employment Tax (SE:S:DCE:SE:ET)
 - Examination - Specialty Policy, Employment Tax Policy (SE:S-DCE:HQ:SP:ETP)
 - Federal, State & Local/ Employment Tax Area, EO Examination (FSL/ET)
 - Other areas that are affected by these policies and procedures include Appeals, Counsel, SB/SE Examination, LB&I, and TE/GE

4.23.3.1.1
(11-19-2018)
Background

- (1) Employment tax returns generally do not contain information that would provide a basis for identifying issues for examination potential. Examination of returns are focused on known or probable areas of non-compliance. There are a number of programs and criteria used to identify those issues or returns that have the greatest potential.
- (2) The Employment Tax Examination Program is a lead-driven program. Examinations can originate from a variety of sources, some of which are listed in this section.
- (3) This IRM also provides the basics for initiating an employment tax examination.

4.23.3.1.2
(11-19-2018)
Authority

- (1) Employment tax provisions are found at Internal Revenue Code Subtitle C:
 - Chapter 21, Federal Insurance Contributions Act (FICA),
 - Chapter 22, Railroad Retirement Tax Act (RRTA),
 - Chapter 23, Federal Unemployment Tax Act (FUTA),
 - Chapter 24, Federal Income Tax Withholding (FITW), and
 - Chapter 25, General Provisions relating to employment taxes and collection of income taxes at source.
- (2) The Employment Tax Program is governed by Policy Statements and other internal guidance that apply to all Service personnel regardless of operating division. The Policy Statements found in IRM 1.2, Servicewide Policies and

Authorities apply to all employment tax issues and examinations. Examiners should review these Policy Statements to properly perform their examination duties.

- (3) A website, Delegation Orders by Process, located at <https://www.irs.gov/privacy-disclosure/delegation-orders-and-policy-statements-by-process> summarizes data contained in the applicable IRM sections under IRM 1.2, relating to Delegation Orders, in a single, electronic source.
- (4) IRM 4.23 provides Servicewide instructions for all operating divisions with employees involved with the correct filing, reporting, and payment of employment taxes. IRM 4.23 serves as the foundation for consistent administration of employment taxes by various IRS operating divisions. By providing one source of authority for all operating divisions, the Service greatly reduces philosophical and procedural inconsistencies.

4.23.3.1.3
(11-19-2018)
Responsibilities

- (1) Director, Specialty Examination Policy is responsible for the procedures and updates addressed in this IRM.
- (2) Director, Specialty Examination is the executive responsible for examination operational compliance.

4.23.3.1.4
(11-19-2018)
Program Objectives and Reviews

- (1) Program Goals: The processes and procedures provided in this IRM are consistent with the objectives or goals for Employment Tax - Examination that are addressed in IRM 1.1.16.3.3.3, Employment Tax Examination and for Employment Tax Policy, found in IRM 1.1.16.3.5.2.2, Employment Tax Policy.
- (2) Program Effectiveness: Program goals are measured with Employment Tax Embedded Quality Performance Reports that monitor whether quality attributes are applied uniformly and consistently.
- (3) Annual Review: Employment Tax Policy - Program Manager, is responsible for reviewing the information in this IRM annually to ensure accuracy and promote consistent tax administration.

4.23.3.1.5
(11-19-2018)
Program Reports

- (1) Program Reports: Information regarding the reporting of program objectives are included on, but not limited to, the following reports:
 - Headquarters Examination Monthly Briefing,
 - Program Manager Monthly Briefing,
 - Examination Operational Review, and
 - Business Performance Reviews.
- (2) The Quarterly Business Performance Review (BPR) provides updates on the status of the Whistleblower claims in Operating Division SME status.

4.23.3.1.6
(02-25-2021)
Acronyms

- (1) The following table lists commonly used acronyms and their definitions:

Acronym	Definition
CAF	Centralized Authorization File
CEC	Corporate Executive Compliance

Acronym	Definition
CNMI	Commonwealth of Northern Mariana Islands
CFOL	Corporate Files On-Line
CPEO	Certified Professional Employer Organization
EIN	Employer Identification Number
EFTPS	Electronic Federal Tax Payment System
ESPP	Employee Stock Purchase Plans
ETER	Employment Tax Examiner's Report
ET-WSD	Employment Tax - Workload Selection and Delivery
FEA	Fraud Enforcement Advisor
FICA	Federal Insurance Contributions Act
FMV	Fair Market Value
FITW	Federal Income Tax Withholding
FSL/ET	Federal, State and Local/ Employment Tax Area, Exempt Organizations - Examination
FTS	Fast Track Settlement
FUTA	Federal Unemployment Tax Act
IDRS	Integrated Data Retrieval System
IMF	Individual Master File
ISO	Incentive Stock Option
ITG	Indian Tribal Governments
LCC	Large Corporate Compliance Program
LB&I	Large Business & International
OD-SME	Operating Division - Subject Matter Expert
PEO	Professional Employer Organization
PLR	Private Letter Ruling
PMFOL	Payer Master File On Line

Acronym	Definition
PSP	Payroll Service Providers
RA	Revenue Agent
ROE	Revenue Officer Examiner
RRTA	Railroad Retirement Tax Act
SB/SE	Small Business/Self-Employed
SEC	Securities and Exchange Commission
SECA	Self-Employment Tax Contributions Act
SERP	Supplemental Executive Retirement Plan
SME	Subject Matter Expert
SRS	Specialist Referral System
SSA	Social Security Administration
TAS	Taxpayer Advocate Service
TAM	Technical Advice Memorandum
TBOR	Taxpayer Bill of Rights
TCO	Tax Compliance Officer
TE/GE	Tax Exempt/Government Entities
TPP	Third Party Payer
WB	Whistleblower
WSD	Workload Selection and Delivery

4.23.3.1.7
(02-25-2021)

Related Resources

- (1) The following table lists the primary sources of guidance:

Source	Title	Description of Guidance
IRM 4.23	Employment Tax	IRM sections, the majority of which are owned by SB/SE Specialty Examination Policy. Provides Servicewide instructions for employees of all operating divisions involved with the correct filing, reporting, and payment of employment taxes. IRM 4.23 serves as the foundation for consistent administration of employment taxes by various IRS operating divisions.
IRM 25.2.1	Information and Whistleblower Awards - General Operating Division Guidance for Working Whistleblower Claims	Provides procedures and guidance for all Service personnel to follow when dealing with information and Whistleblower awards.

(2) Additional resources include:

- The SB/SE Knowledge Management home page for Employment Taxes <https://portal.ds.irsnet.gov/sites/VL014/Pages/default.aspx>.
- The Specialist Referral System (SRS) home page: <https://srs.web.irs.gov/>.
- A list of SB/SE Employment Tax Policy Analysts, their contact information and program assignments, are found at: *Policy Analysts*.
- The web site "Examining an Employment Tax Case" at: <https://portal.ds.irsnet.gov/sites/vl014/pages/home.aspx?bookshelf=examining%20an%20employment%20tax%20case>.

(3) The IRS adopted the Taxpayer Bill of Rights in June 2014. Employees are responsible for being familiar with and acting in accord with taxpayer rights. See IRC 7803(a)(3). For additional information about TBOR, see <https://irssource.web.irs.gov/SitePages/Taxpayer%20Bill%20of%20Rights.aspx> and IRM 1.2.1.2.36, Policy Statement 1-236, "Fairness and Integrity in Enforcement Selection."

(4) The Taxpayer Advocate Service (TAS) is an independent organization within the IRS whose employees assist taxpayers experiencing economic harm, who are seeking help in resolving tax problems that have not been resolved through normal procedures, or who believe that an IRS system or procedure is not working as it should. Pub 1546, Taxpayer Advocate Service - We Are Here

to Help You, provides contact and additional information. The program is designed to alleviate taxpayer hardships that arise from systemic problems or the application of the Internal Revenue Code. In addition, see IRM 13.1.7, Taxpayer Advocate Service (TAS) Case Criteria, and IRM 13.1.19, TAS Operations Assistance Request (OAR) Process, for additional information.

- (5) Employment tax examiners should consider the disclosure provisions when preparing agreed and unagreed case reports. See the Knowledge Management Disclosure web site at: <https://portal.ds.irsnet.gov/sites/VL003/Pages/default.aspx> for additional information.

4.23.3.2
(11-19-2018)
**Identifying SB/SE
Employment Tax
Examination Sources**

- (1) SB/SE Employment Tax Workload Selection and Delivery (ET-WSD) has primary responsibility for workload identification for Employment Tax. However, field examiners must be continuously aware of new developments, rulings, and decisions affecting industries within their jurisdictions. Field Examination is encouraged to forward suggestions for Preparer Projects, Compliance Initiative Projects (CIPs) and partnering opportunities to ET-WSD at “SBSE ET WSD Referrals”.

- (2) There are various sources that assist in detecting taxpayers who are not complying with the employment tax laws. These sources include:

- a. Internal Revenue Service employees who are in constant contact with taxpayers and are aware of possible non-compliance. Employment tax managers and examiners may receive referrals from Collection, Taxpayer Assistance Centers, Criminal Investigation, Examination, Automated Collection System (ACS) call sites, and Campus. Leads received from these sources must be forwarded to ET-WSD for evaluation and selection for audit, if warranted.

Note: Specialist Referral System (SRS) referrals submitted to the Employment Tax Program for immediate assistance by an Employment Tax Specialist will be evaluated and assigned by the group manager. These are not forwarded to ET-WSD unless the case cannot be worked immediately or the referral is not made on a case currently open for an income tax examination.

- b. Other federal and state government agencies (Social Security Administration, Department of Labor, State Departments of Unemployment, etc.),
 - c. Market segment studies, and
 - d. Compliance initiatives.
- (3) Strong emphasis is placed on the required filing-check program. During an examination of an income tax, excise tax, or exempt organization return, the examiner will follow the established procedures to determine if the taxpayer is in compliance with employment tax filing requirements and will decide if an examination of employment tax returns is warranted. If warranted, it should be conducted concurrently with the primary examination. If a concurrent examination is not possible, an employment tax referral should be made.
 - (4) Related return information must be considered when determining examination potential for employment tax returns. This includes a review of the related income tax returns and, in the case of large corporations or publicly traded companies, a review of financial statements. Information may also be gained from news articles, company publications, and internet searches, such as Securities and Exchange Commission (SEC) filings and company websites.

- (5) All income tax cases selected for examination under the LB&I program should include consideration of employment tax potential. For a listing of mandatory referrals in the Specialist Referral System, see: <https://organization.dstest.irsnet.gov/sites/itad/SRSHelp/SRSMandatoryReferralSpecifications/SitePages/Home.aspx>. Where employment tax issues or returns warrant an examination, an employment tax specialist will prepare the employment tax portion of the examination plan.
- (6) The request for a specialist is made using the SRS at: <https://srs.web.irs.gov/>. SRS can be used by any employee, regardless of operating division. In addition to requesting assistance, SRS may be used to submit informal questions or to request a consultation with an employment tax specialist to discuss employment tax potential in the case.
- (7) The assistance of an employment tax specialist may be sought regardless of whether the team audit concept is employed in the particular case.
- (8) The Employment Tax Program may receive referrals from Criminal Investigation (CI). These lead cases should be worked with continual awareness of fraud potential. If indications of fraud are developed during the examination, the case should be discussed with the group manager and Fraud Enforcement Advisor (FEA) to determine if a fraud referral to CI is warranted.

4.23.3.3 (11-19-2018) **Planning and Selection Criteria for SB/SE Employment Tax Examination**

- (1) In SB/SE, classification and selection of employment tax returns for examination is the responsibility of ET-WSD.
- (2) ET-WSD conducts the initial review of leads to determine employment tax audit potential. Generally, leads have been identified as part of a project, identified workstream, or referral. In most situations, the case file is pre-built with IDRS research, a classification sheet, and any other appropriate data.
- (3) All employment tax projects and workstreams are designed to identify cases with high potential for audit. Identification is generally achieved by sorting and filtering data.
- (4) The following subsections include examples of the types of work classified and selected by ET-WSD. The list is not all-inclusive.

4.23.3.3.1 (02-25-2021) **Combined Annual Wage Report (CAWR)**

- (1) The purpose of the IRS Combined Annual Wage Report (CAWR) program is to ensure that employers paid and reported the proper amount of taxes, withholding, and advanced earned income credit. This is done by comparing five fields:
 - Social Security Wages,
 - Social Security Tips,
 - Medicare Wages and Tips,
 - Federal Income Tax Withheld, and
 - Advanced Earned Income Credit,on:
 - Form W-2, Wage and Tax Statement,
 - Form W-2c, Corrected Wage and Tax Statement,
 - Form W-3, Transmittal of Wage and Tax Statements,
 - Form W-3c, Transmittal of Corrected Wage and Tax Statements,

together with withholding amounts reported on information returns including, but not limited to:

- Form 1099-MISC, Miscellaneous Information (formerly, Miscellaneous Income),
- Form 1099-NEC, Nonemployee Compensation
- Form 1099-R, Distributions From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc., and
- Form W-2G, Certain Gambling Winnings,

to the amounts reported on the Forms 94X:

- Form 941, Employer's QUARTERLY Federal Tax Return,
- Form 943, Employer's Annual Tax Return for Agricultural Employees,
- Form 944, Employer's ANNUAL Federal Tax Return,
- Form 945, Annual Return of Withheld Federal Income Tax, and
- Schedule H (Form 1040), Household Employment Taxes.

- (2) Employers filing Forms W-2 but no Form 941 may be non-filers. Employers consistently out of balance between Form W-2 and Form 941, coupled with other indicators, may indicate increased audit potential.
- (3) See IRM 4.19.4, Liability Determination - CAWR Reconciliation Balancing, for additional information on CAWR notices.

4.23.3.3.2
(08-25-2016)
**CP2100 Backup
Withholding (BWH)
Notice Report**

- (1) The Backup Withholding (BWH) program provides notices to payers who file information returns with incorrect payee Taxpayer Identification Numbers (TINs). The Computer Paragraph (CP) 2100 Notice (CP2100) advises payers that backup withholding could become necessary if a payee fails to certify or validate their TIN. The CP2100 instructs the payer to provide a "B" Notice to each payee whose Name/TIN combination and account number are identified as incorrect by the IRS. The "B" Notice informs the payee that the Name/TIN combination furnished to the payer does not match IRS or SSA records and describes the steps the payee must take to avoid backup withholding.
- (2) The CP2100 Notice also lists payee accounts with missing TINs on which the payer was required to backup withhold under IRC 3406(a)(1)(A). Payers with missing or obviously incorrect TIN accounts should not wait to receive a CP2100 to begin backup withholding. The BWH program includes a number of different information returns, including but not limited to:
 - Form 1099-INT, Interest Income,
 - Form 1099-MISC, Miscellaneous Information (formerly, Miscellaneous Income), and
 - Form 1099-K, Payment Card and Third Party Network Transactions.
- (3) Payers with payees receiving Form 1099-MISC with missing or obviously incorrect TINs have the highest audit potential; backup withholding on qualifying amounts should have been withheld at the time of payment.
- (4) See IRM 5.19.3, Backup Withholding Program, IRM 4.23.8.13.1, Overview of Backup Withholding Notices, and IRM 20.1.7.6, *Notice 972CG*, for additional information on CP2100 notices.

4.23.3.3.3
(11-19-2018)
SS-8 Program

- (1) Form SS-8, Determination of Worker Status for Purposes of Federal Employment Taxes and Income Tax Withholding, is the form used by either a firm or a worker to request a determination or ruling letter regarding the federal employment tax status of a class of workers (firm), or of the individual worker. If the firm/worker submits a request for a determination by letter, they should be provided with Form SS-8 and advised to resubmit their request for determination on Form SS-8. There is no user fee for this type of ruling request.
- (2) The first revenue procedure issued every year provides procedures for issuing rulings, determination letters, and information letters, and should be referred to for guidance when responding to a request for determination on a Form SS-8.
- (3) The SS-8 Program has been centralized for better coordination and management of the program. Taxpayers are required to forward their request to the address identified in the instructions for Form SS-8.
 - a. Form SS-8 requests involving state and local government entities are forwarded to the Brookhaven Campus. The completed SS-8 determination case files affecting state and local government entities will be forwarded to the respective states. See IRM 7.50.1.7.2, Coordination with the State Tax Agencies, for additional information.
 - b. Form SS-8 requests involving agencies and instrumentalities of the Federal government that are received by the SS-8 program are forwarded to the Associate Chief Counsel (TEGE) at the following address:
Internal Revenue Service
Attn: CC:TEGE
Ben Franklin Station
P.O. Box 7604
Washington, DC 20044
- (4) A determination letter or ruling will not be issued if the worker objects to the disclosure to the firm of his/her identity or a copy of the information he/she submitted.
- (5) Form SS-8 is a potential source of leads for employment tax examinations. After completing all actions related to issuance or non-issuance of the determination letter, the SS-8 centralized location should determine whether there is any audit potential in the forms received. For additional information on referrals, see:
 - a. IRM 7.50.1.8.5, Referrals, and
 - b. IRM Exhibit 7.50.1-11, Field Referral Criteria.
- (6) SB/SE Specialty - Employment Tax will provide guidance to the SS-8 Unit in support of the worker classification process.
- (7) The Service will not issue a determination letter pursuant to the filing of Form SS-8 on whether a worker is a bona fide partner and, therefore, not an employee of the business. See section 3.01(104) of Rev. Proc. 2016-3.
- (8) For information on procedures for examiners coordinating worker classification issues between the SS-8 Program and Examination, see IRM 4.23.18, Employment Tax - Coordinating Worker Classification Determinations Between SS-8 Program and Exam.

- (9) For information on procedures for Brookhaven Campus employees responsible for handling determinations of employee-independent contractor status when Form SS-8 is filed with the Service, see IRM 7.50.1, Form SS-8 Worker Classification Determinations, Form SS-8 Processing Handbook.

4.23.3.3.4
(08-25-2016)
Classification Settlement Program (CSP) and Voluntary Classification Settlement Program (VCSP) Follow-up

- (1) The Classification Settlement Program (CSP) allows businesses and tax examiners to resolve worker classification cases without involving an appeal, thereby reducing taxpayer burden. The procedures ensure that the taxpayer relief provisions under section 530 of the Revenue Act of 1978 are properly applied. Under the CSP, examiners are able to offer businesses under examination a worker classification settlement using a standard closing agreement. See IRM 4.23.6.15.3, CSP Standard Closing Agreement.
- (2) Monitoring and follow-up activities are centralized in the ET-WSD for agreements secured in SB/SE and Appeals; TE/GE will monitor its own agreements. Since CSP closing agreements include a provision that the taxpayer complies prospectively, research using Corporate Files On-Line (CFOL) command codes will ensure that taxpayers are in compliance with their agreement. See IRM 4.23.6.17, Monitoring CSP Agreements.
- (3) Taxpayers not in compliance with CSP closing agreements have a high worker classification audit potential. See IRM 4.23.6, Employment Tax - Classification Settlement Program (CSP), for additional information.
- (4) Under a Voluntary Classification Settlement Program (VCSP) closing agreement, businesses not under examination can apply for a worker classification settlement using a standard closing agreement. Monitoring and follow-up activities for SB/SE and LB&I will be centralized in the ET-WSD; TE/GE will monitor its own agreements. Because the VCSP closing agreement includes a provision that requires the taxpayer to comply prospectively, research using CFOL command codes will ensure that taxpayers are in compliance with the VCSP closing agreements. See IRM 4.23.20, Employment Tax - Voluntary Classification Settlement Program (VCSP) Procedures, for additional information.

4.23.3.3.5
(08-25-2016)
Compliance Initiative Projects (CIP)

- (1) Some lead-driven initiatives require an approved Compliance Initiative Project (CIP). CIPs involve groups of taxpayers characterized by unique employment tax compliance issues. All employment tax specialists are encouraged to identify areas where CIP procedures can assist in identifying employment tax non-compliance. Any suggestions should be discussed with the manager before contacting Employment Tax Policy to discuss the issue and determine if development of a CIP is appropriate.
- (2) The criteria mentioned in IRM 4.17.1.2, Purpose and Scope, must be used to determine when CIP procedures apply for Employment Tax projects.
- (3) CIP procedures are not required in the case of "routine business operations," as defined in IRM 4.17.1.3, Activities Not Subject to CIP Procedures.

4.23.3.3.6
(11-19-2018)
Employment Tax Leads

- (1) ET-WSD has the primary responsibility for reviewing leads received from sources other than SRS and making a determination on whether the case will be selected for examination or rejected for lack of potential. Group managers and examiners receiving referrals from sources other than the SRS will submit these referrals to ET-WSD via the electronic mailbox “*SBSE ET WSD Referrals” for consideration.
- (2) Employment Tax Examination group managers receive all Specialist Referral System (SRS) referrals for their area of coverage. Group managers will ensure that the referrals received are given appropriate consideration, consistent with available staffing and resources. Compliance efforts and follow-up actions will also be determined in accordance with resource availability. If the receiving group manager cannot work the case due to resource issues, consideration must be given to transferring the case to a different employment tax group to work. Non-compliance with tax laws within the geographic area should be considered when determining if a transfer is warranted.
- (3) Several CFOL command codes can be used to research case potential and priority. These include:
 - a. AMDIS: Lists current examination status. If an examination is in process in another group, forward the information to the group controlling the examination.
 - b. BRTVU/RTVUE: Provides transcribed views of original Business Master File (BMF) and Individual Master File (IMF) tax returns and schedules. These can frequently be used in place of an original return. However, original returns may be requested for inspection, when needed.
 - c. The Employee User Portal (EUP): For review of any e-filed returns. This system provides a scanned copy of the filed return that can be inspected for potential employment tax issues and should be used when original returns are not available.

Note: EUP research should be a higher priority than BRTVU/RTVUE when examiners cannot secure the tax returns from the taxpayers.
 - d. PMFOL: Provides summary of Forms 1099/1096 data. Includes the type of Form 1099, number filed, and total remuneration paid by the payer TIN. It will also show the number of Forms W-2 filed by the employer EIN.
 - e. BMFOL/IMFOL: Provides online research of nationwide entity and tax data information. When used with Definer Code “Z”, it shows prior audit history information. When used with Definer Code “U”, consolidated annual Forms 941 and W-2 information is displayed. When used with Definer Code “I”, it shows a complete filing history, freeze codes, and any outstanding liabilities owed by the taxpayer.
- (4) Exhibit 4.23.3-1, Guidelines for Evaluation of Referrals and Income Tax Returns, contains further guidance that can be used when evaluating referrals received through the SRS system.

4.23.3.3.6.1
(11-19-2018)

SBSE ET-WSD Referrals

- (1) ET-WSD has the primary responsibility for reviewing all other leads received and making a determination on whether the case will be selected for examination or rejected for lack of potential. Referrals received from sources other than the SRS by managers or examiners will be submitted to ET-WSD via the electronic mailbox at “*SBSE ET WSD Referrals”.
- (2) Examiners are to ensure all federal return reporting requirements have been met and that all required returns, including non-employment tax and information returns, have been filed and do not contain Large, Unusual, and Questionable (LUQ) items. When an income tax referral is required, the examiner must complete a Form 5346, Exam Information Item, and forward it to ET-WSD at “*SBSE ET WSD Referrals” and document all actions in the case file.
- (3) Referrals should be completed electronically or, if received in a paper format, scanned and forwarded to this mailbox. If supporting documentation is too voluminous to scan, the manager or examiner will coordinate with ET-WSD to submit the documentation via mail to associate with the referral.

4.23.3.3.6.1.1
(02-25-2021)

**Research Credit
Referrals to Income Tax**

- (1) Requests for income tax assistance related to the employment tax research credit will be made using Form 5346, Examination Information Report, and submitted via email to “*SBSE R&E Credit ETax Referral”.
- (2) To request a case transfer to Income Tax, prepare a referral using Form 5346, Examination Information Report, accompanied by the spreadsheet “ET Research Referral Information.”
- (3) For information required for the referral, see:
 - SBSE Employment Tax Policy Alert #2020-007, “ET Referrals for Research Credit Assistance - Updated”, issued April 13, 2020.
 - SBSE Employment Tax Policy Alert #2020-008, “Research Credit – Gross Receipts Definition”, issued April 17, 2020.
- (4) For additional information, see:
 - IRM 4.23.5.23, Qualified Small Business Payroll Tax Credit for Increasing Research Activities, and subsequent subsections.
 - Notice 2017-23, “Interim Guidance and Request for Comments; Election by Qualified Small Business to Claim Payroll Tax Credit for Increasing Research Activities”.
 - irs.gov website: “Qualified Small Business Payroll Tax Credit for Increasing Research Activities” at *Payroll Tax Credit*.

4.23.3.3.7
(11-19-2018)

Unreported Tip Income

- (1) Tip cases are classified when tipping is customary for the employer’s industry and a return reflects low or zero tip wages reported on its Form 941.
- (2) A tip examination is warranted on entities, including food and beverage establishments, if an analysis of tip reporting by the entity indicates a significant amount of unreported tips. The analysis for a tip examination includes, but is not limited to, the type and size of the business, the historical tip reporting by the entity, and the Form 8027, Employer’s Annual Information Return of Tip Income and Allocated Tips.

4.23.3.4
(02-25-2021)
Selection Criteria for Large Case Referrals

- (1) Often, the selection of an LB&I employment tax return for examination is initiated from a referral generated at the start of a related income tax examination. The referral may be a result of a mandatory procedure or based on a specific or identified concern of the agent or manager making the referral. Once the referral is made, it is the responsibility of the employment tax manager and agent to evaluate the examination potential. Refer to IRM 4.23.4.5, Procedures for Employment Tax Examiners Working on Large Case Audits: General, for specific guidance related to Large Case procedures.

4.23.3.5
(11-19-2018)
Compliance Checks

- (1) In certain situations, employment tax leads may be assigned directly to the examiner to determine if a compliance check should be conducted rather than an examination.
- (2) A compliance check is a review conducted under Title 26 of the IRC to determine whether a business owner or individual is adhering to record keeping and information reporting requirements. It does not directly relate to the determination of a tax liability for any particular period.
- (3) A compliance check should be considered as an opportunity to educate the taxpayer and encourage compliance. Pub 3114, Compliance Checks, contains additional information on compliance checks and is used as a taxpayer handout.
- (4) Compliance checks can be useful tools in certain situations. However, care must be exercised to prevent examining the taxpayer under the guise of a compliance check to avoid infringing on taxpayer rights and to also avoid establishing a section 530 safe haven.

Note: Generally, SB/SE Employment Tax does not conduct compliance checks, but uses examinations to determine adherence to information and reporting requirements. Managerial approval must be secured by an examiner to conduct a compliance check.

Note: For information on tip compliance checks, see IRM 4.23.7.12, Mandatory Compliance Follow up Reviews on Voluntary Tip Agreements.

4.23.3.5.1
(11-19-2018)
Guidelines for Compliance Checks

- (1) Examiners will schedule a compliance check by letter and enclose Pub 3114, Compliance Checks,, Pub 1, Your Rights as a Taxpayer, and Notice 609, Privacy Act Notice, as enclosures to the compliance check appointment letter. At the review, the examiner must explain to the taxpayer that the appointment is merely a compliance check and does not qualify as an inspection under IRC 7605(b) or as an audit for purposes of section 530 of the Revenue Act of 1978.
- (2) To avoid unauthorized disclosures of return information, immediately identify the taxpayer or his/her authorized representative. For purposes of identification, the examiner must verify and document the complete name, title, and the purpose of the call/contact. For further information, see IRM 21.1.3.2.3, Required Taxpayer Authentication.
- (3) Limit the scope of the check to IRS documents that have already been voluntarily prepared and filed with the Service including any amended returns. In addition, the compliance check should inspect forms that are not required to be filed (e.g., Form W-4).

(4) During a compliance check, **do not**:

- Inspect books and records
- Discuss books and records
- Question whether a worker is an employee or independent contractor
- Ask how the taxpayer determined that a Form W-2 or 1099 should be filed

However, if no information return was filed, it is reasonable to ask how much was paid and whether the recipient was incorporated, or other questions designed to determine whether or not filing was required.

- (5) If the examiner is able to determine the taxpayer is in compliance or is able to bring the taxpayer into compliance at the initial interview without reviewing the books or records or asking common law questions, the examiner may recommend that no examination be conducted. If delinquent returns are submitted to the examiner by the taxpayer, the examiner will follow procedures as described in IRM 4.23.12, Employment Tax - Delinquent Return Procedures.
- (6) If the examiner cannot determine the taxpayer's compliance at the initial compliance interview, the examiner will inform the taxpayer that the compliance check is completed and a full employment tax examination will be opened. At that time, the examiner must follow all established examination procedures.

4.23.3.6
(02-25-2021)
**Employment Tax
Examination Procedures**

- (1) The following procedures are provided to assist examiners in the examination of employment tax returns.

4.23.3.6.1
(02-25-2021)
Pre-Contact Analysis

- (1) The examiner is responsible for determining the scope of the audit, beginning with the issues identified by the classifier on the classification check sheet. The examiner must perform a pre-contact analysis including a thorough review of the case file to identify LUQ items beyond those selected on the classification check sheet. For additional information regarding the Pre-Contact Analysis, see IRM 4.10.2.3, In-Depth Pre-Contact Analysis.

4.23.3.6.2
(08-25-2016)
**Required Filing Checks
For Non-Employment
Tax Cases**

- (1) The group manager should be alert for possible employment tax issues when assigning non-employment tax cases and should, when appropriate, inform the examiner to consider the required filing checks procedures. See IRM 4.23.3.6.3, Procedures for Required Filing Checks, Scope, and Controls of Employment Tax Examinations, and IRM 4.10.5, Required Filing Checks.
- (2) The related employment tax returns are not usually associated with the income tax returns or tax-exempt returns classified for examination. Examination of the related returns will ordinarily be made from the taxpayer's retained copies of such returns, TRDBV, or a BRTVU. If an employment tax examination is warranted but the examiner cannot secure copies of the returns, the examiner may request the originals of those returns for association with the case file.
- (3) Collection employees share full compliance check responsibilities. When making a field visit, the revenue officer should determine whether all required employment tax returns were filed and all employment taxes paid. If the revenue officer encounters a situation where it appears that the firm is treating employees as non-employees or where there are questionable fringe benefits,

a referral will be made for LB&I or SB/SE taxpayers to ET-WSD using the electronic mailbox at “*SBSE ET WSD Referrals.” Referrals for TE/GE taxpayers should be sent to the appropriate Classification Area; see IRM 4.23.2.3.1, Referral to Employee Plans and Exempt Organizations. Collection employees should refer to the Collection Handbook for further guidance.

- (4) When an employment tax specialist is needed to assist the income tax examiner with employment tax issues on open income tax cases, a referral must be made by the income tax examiner through the Specialist Referral System (SRS). If an income tax examiner becomes aware of employment tax non-compliance on a return not directly related to an open income tax case, a referral can be made to ET-WSD using the electronic mailbox at “*SBSE ET WSD Referrals” for review and potential selection for a future examination.

4.23.3.6.3 (11-19-2018) **Procedures for Required Filing Checks, Scope, and Controls of Employment Tax Examinations**

- (1) The following subsections outline an employment tax examiner’s responsibilities regarding required filing checks, scope of exams, and examination controls, and will assist the examiner in meeting quality standards and ensuring appropriate and consistent audit procedures.

4.23.3.6.3.1 (11-19-2018) **Required Filing Checks**

- (1) Examiners must determine whether:
 - The taxpayer filed required information returns. Examiners must address whether the appropriate information returns were filed for any reportable payments (e.g., Form 1099-MISC, Miscellaneous Income; Form 1099-K, Payment Card and Third Party Network Transactions; Form 1099-INT, Interest Income.) If the appropriate forms were not correctly filed, the examiner must consider expanding the audit to include a penalty case file and/or Form 945, Annual Return of Withheld Federal Income Tax, for the development of the backup withholding issue. All actions must be documented in the case file.
 - The taxpayer withheld income tax and FICA taxes (including Additional Medicare Tax for the tax periods beginning January 1, 2013) from wages, and/or backup withholding from reportable payments. See IRM 4.23.8.4.1, IRC 3102(f)(3) – Relief for Employer When Employees Have Paid Additional Medicare Tax on Wages IRM 4.23.8.6, FICA Tax, and IRM 4.23.8.13, IRC 3406 – Backup Withholding.
 - The taxpayer has unfiled employment tax returns. The audit will generally be expanded to include those years as part of the current examination.
 - The taxpayer met all other federal return reporting requirements. Other unfiled returns (e.g., income, excise, etc.) will generally be solicited as part of the audit. If received, the examiner must date stamp the return, review for any LUQ items, and submit the return to the address the taxpayer would normally mail the return if it had been timely filed. If the return is not received by the time the employment tax examination is complete, or if LUQ items are identified in a review of the related returns, a Form 5346, Examination Information Item, must be completed and forwarded to ET-WSD. ET-WSD will review the referral for com-

pleteness and forward to the appropriate location. All actions and decisions relating to Form 5346 and unfiled returns MUST be fully documented in the case file.

Note: TE/GE will follow its own referral procedures.

- (2) All referrals must be electronically submitted to “*SBSE ET WSD Referrals”. The referrals should be completed electronically or, if received in a paper format, must be scanned and forwarded to this mailbox for consideration. If supporting documentation is too voluminous to scan, the manager or examiner will coordinate with ET-WSD to submit the documentation via mail to associate with the referral.
- (3) In cases where LUQ items are identified in a return submission, the examiner will make a copy of the return, attach it to the referral, and identify it as “Copy”. The original return will be mailed to the address the taxpayer would normally mail the return. In no case should the original return be attached to the referral.

4.23.3.6.3.2
(11-19-2018)
**Scope of an
Employment Tax
Examination**

- (1) All employment tax cases received from ET-WSD contain a classification sheet detailing the issues identified during classification. The classification sheet will indicate if a case has been designated by ET-WSD as a limited scope examination. Examples of limited scope employment tax examinations include all Employment Tax, Tax Compliance Officer (ET TCO) examinations, or cases with special circumstances specifically directed by management to be a limited scope exam. Examiners will follow the steps shown in (2) below for limited scope examinations. When the scope is not limited during classification or by management, the examiner will follow steps shown in (5) below.

Note: For cases received through the SRS system, the initial scope of the examination will be set by the specialist assigned in conjunction with the income tax examiner that made the referral. Procedures addressing filing checks and interviews will be determined on a case by case basis.

Note: TE/GE will follow its own guidelines and procedures regarding limited scope examinations.

- (2) In all cases designated as limited scope examinations, regardless of source, the examiner must still address and document certain audit steps, including:
 - a. Interviewing the taxpayer and touring the business. A tour of the business is only applicable for field examinations and is not applicable when remote audit procedures are used. When a tour of the business is not feasible, the reasons must be fully documented in the case file.
 - b. Completing the required filing checks addressed in IRM 4.23.3.6.3.1, Required Filing Checks.
 - c. Considering applicable penalties such as failure to file, failure to pay, failure to deposit, and negligence.
 - d. Fully developing the limited scope issue(s).
 - e. Preparing workpapers that support the proposed adjustments. See IRM 4.23.4, Employment Tax – Workpapers, Employment Tax Examinations, for additional information.

- (3) If the steps in (2) above reveal a material potential non-compliance issue, examiners will use their judgment regarding whether to expand the examination to include the issue. If expansion of a limited scope examination to address additional issues is warranted, the examiner must discuss this recommendation with the manager and document the decision in the case file.
- (4) Examples of examinations assigned as limited scope audits:
 - A management directive was issued allowing specific cases to be converted from full employment tax examinations to limited scope examinations. A copy of the directive must be included in the case file to show why the examination was treated as a limited scope examination.
 - During the classification process, a specific issue is identified that needs to be addressed; however, due to the statute of limitations, the case would not be assigned for a full employment tax examination. The classification sheet is clearly marked "limited scope" for the appropriate issue.
 - Cases classified for ET TCOs are limited to issues appropriate to their experience and training. The issue(s) included in the limited scope are clearly reflected on the classification sheet and the sheet is clearly marked "limited scope".
- (5) In examinations **not** designated as limited scope examinations, the examiner will use facts learned during the pre-audit, the interview of the taxpayer, and the review of books and records to determine the scope of the examination. The examiner will limit the scope of the examination if, in the examiner's judgment, it is not in the government's best interest to pursue the issue further. The examiner will expand the scope of the examination to other issues found if, in the examiner's judgment, expansion is warranted to ensure all items necessary for a substantially proper determination of the tax liability have been considered. All examiners must document the basis for any decision to change the scope of the examination.

4.23.3.6.3.2.1
(11-19-2018)
**Collectibility
Considerations
throughout the
Examination**

- (1) When evaluating audit potential and setting the scope of an examination during the pre-contact phase, examiners should:
 - Review the Form 5546, Examination Return Charge-Out Sheet, for "collectibility indicators",
 - Review an AMDISA print for collectibility indicators if Form 5546 is not in the file.
 - Be alert for other indications of collectibility issues (e.g., the taxpayer is deceased, the taxpayer is a defunct corporation, or the taxpayer has filed bankruptcy).
- (2) After discussing potential collectibility issues with the manager (including advice from Collection, if needed), consideration will be given to surveying, not changing, or limiting the scope of the examination. This decision must be documented in the case file.
- (3) During the initial interview, the examiner will also discuss payment options in the event a deficiency is proposed.
- (4) Full payment should be requested upon completion of the examination. If full payment is not received or the case is unagreed, the examiner should provide

the taxpayer with Pub 594, The Collection Process, and follow the tiered interview approach to explain the payment options. A referral to Collection is mandatory for agreed unpaid cases over \$100,000.

- (5) The examiner must document the results of the collectibility determination and the tiered interview in the case file. Lead Sheet 105, Administrative Lead Sheet, contains links to assist in documenting collectibility.
- (6) Collectibility is considered in all phases of the examination:

Collectibility Considerations
Pre-Audit:
Consider collectibility in setting scope
Issue resolution in agreed cases:
Solicit payment
Coordinate with collection
Secure levy source information
Issue resolution in unagreed cases:
Advise taxpayer of IRC 6205 deposit procedures.

- (7) Additional information can be found in:
 - IRM 4.10.1.2.1.10, Right to a Fair and Just Tax System
 - IRM 4.10.2.4.1, Collectibility
 - IRM 4.20.1, , Examination Collectibility Procedures

4.23.3.6.3.3 (11-19-2018) **Controlling Employment Tax Returns**

- (1) Employment tax examinations generally cover an entire calendar year; therefore, the examiner must establish audit controls on all return(s) to address the entire calendar year. This generally means all four quarters of Form 941, Employer's Quarterly Federal Tax Return, will be opened when the examination is started. This applies even if the case results in a no-change, as it will more accurately reflect the audit work conducted. Additionally, any subsidiary or related employment tax return(s) must be opened for examination and established on the Examination Returns Control System (ERCS) when related taxpayer records have been requested and reviewed.

Note: TE/GE uses the Reporting Compliance Case Management System (RCCMS) for electronic establishment of returns for examination.

- (2) Examiners must document the reasons for controlling less than all four quarters of a calendar year. For example, the examiner may determine that it is appropriate to control less than all four quarters of a calendar year when the examination involves a claim filed for a certain period, when bonuses were paid in a specific quarter, or when the business was not operating for a full year.
- (3) Generally, examiners should not start an examination for a calendar year until after the last filing date for all employment tax returns of that year. Normally, this is January 31 following the end of the calendar year.

- (4) Examiners should not request control of any quarter for the current year, unless there are unique circumstances requiring inclusion of the current year quarter(s) (e.g., the taxpayer is no longer in business and the audit is expanded to resolve all remaining employment tax matters). Generally, the examiner will ask the taxpayer to correct any errors for the current year in accordance with IRC 6205 and the applicable regulations.

Example: If an examination of the 2018 and 2019 periods was concluded on November 1, 2020, and the same issues exist for 2020, the examiner will advise the taxpayer to correct them by filing the appropriate amended returns in accordance with IRC 6205. This procedure is consistent with Policy Statements 4-4 and 5-133.

- (5) Examiners should expand any employment tax examination to include prior and subsequent years if the issue(s) under development are material and recurring, or if there appear to be other LUQ items. Failure to expand an examination must be documented and approved by the manager (e.g., statute concerns).

4.23.3.6.3.3.1

(02-25-2021)

Examination Request Master File, Form 5345-D

- (1) As soon as it is determined that an examination will be conducted, the examiner will complete Form 5345-D, Examination Request-ERCS (Examination Returns Control System) Users. A maximum of five tax periods for the same taxpayer may be requested on each Form 5345-D. TE/GE examiners may continue to use Form 5597, TE/GE IMF/BMF/EMPF Request.

Note: Areas with automated inventory controls systems, such as ERCS, Report Generation Software (RGS), and Issue Management System (IMS), should follow locally established procedures for requesting or updating controls.

Note: TE/GE will follow its own procedures for establishing and controlling examinations.

- (2) Examinations of LB&I Large Corporate Compliance (LCC) cases must be annotated on Form 5345-D by placing a "C" in the field that asks if this is an LB&I/CIC-LCC-CD case.

Note: See IRM 4.50.2.2.2, Large Corporate Compliance Program (LCC).

- (3) Cases originating in Classification will have the project and tracking code on the controls prior to receipt in the group. Employment Tax project codes will be determined by the main issue identified during classification; tracking codes indicate the source of the case. All related tax periods must have the same tracking code as the key case. For cases received directly in the group, such as through the SRS system, project and tracking codes must be determined by using the most current listing available, found on the Employment Tax website at: *Project Codes*.

Note: TE/GE will follow its own procedures for project and tracking codes.

- (4) After obtaining group manager approval, forward the Form 5345-D for terminal input. Retain a copy of each Form 5345-D in the case file.

4.23.3.6.4
(02-25-2021)
**Scheduling the Initial
Appointment**

- (1) Prior to making initial contact, examiners must check BMFOLT or TXMODA to determine if a valid power of attorney is on file for the tax periods and type of tax under examination. If a TC 960 is posted the examiner must secure a CFINK and retain a copy in the file. If CFINK indicates that a valid power of attorney is on file, the examiner will mail the appropriate initial contact letter to the taxpayer and a copy of the letter to the representative with Letter 937, Transmittal Letter for Power of Attorney. After mailing the initial letter, and sufficient time has elapsed for the taxpayer to respond (allow 14 calendar days from the mailing of the letter), employees can initiate contact by telephone, as needed. For additional information regarding a power of attorney see IRM 4.11.55, Power of Attorney Rights and Responsibilities.
- (2) Letter 3850, Employment Tax Appointment Letter, or Letter 3851, Employment Tax Call-in Appointment Letter, will be used in all instances to schedule a field appointment for an employment tax interview, except for LB&I team audit cases. When the taxpayer calls in response to the Letter 3851, the examiner will discuss documents necessary for the examination. The examiner will send Letter 3253, Taxpayer Appointment Confirmation Letter, confirming the appointment and detailing documents needed in the attached Form 4564, Information Document Request. If the taxpayer does not call in response to Letter 3851, the examiner will issue Letter 3850 scheduling the appointment.
- (3) Employment Tax TCOs generally conduct audits using remote audit procedures; Letter 3850-T, Employment Tax TCO Appointment, will be used to schedule this type of audit. This letter may also be used by any examiner following the remote audit process.
- (4) See IRM 4.10.2.8.1, Making Initial Contact, for additional information regarding scheduling the initial appointment.
- (5) Schedule the appointment at a time and/or place convenient to the taxpayer and consistent with Treasury Regulation 301.7605–1. For examinations not following the remote audit process, efforts should be made to conduct the examination at the taxpayer's place of business. Field examinations are normally conducted at the taxpayer's place of business. Enter a taxpayer's private premises only when invited in by the rightful occupant. If fraud is a feature or if the interests of the government may be jeopardized, the convenience of the taxpayer should be considered but need not be regarded as paramount.
- (6) Examinations should generally be conducted at the location where the taxpayer maintains the books and records of the business operations. However, the examination may be conducted at a place other than the location of the business operation if agreed to by the examiner and the taxpayer or the authorized representative.
- (7) Publication 1, Your Rights as a Taxpayer, and Notice 609, Privacy Act Notice, must be included with all initial contact letters. Publication 5146, Employment Tax Returns: Examinations and Appeal Rights, will also be mailed with the initial appointment letter. If not mailed to the taxpayer in advance of the interview, provide the documents at the initial appointment. Workpapers and the Activity Record should include when and how these documents were provided to the taxpayer.
- (8) Examiners are not authorized to assure taxpayers that their books and records will be used solely for civil purposes. If a taxpayer insists upon such assurances or gives the examiner a statement that the books and records are only

being made available for limited purposes, the examiner will ask for and document the taxpayer's reason(s) for refusing to furnish the records without restriction, discontinue the examination, and report this information to the group manager. The group manager and the examiner should then discuss the matter, addressing the use of summons, third-party contacts, and other potential avenues to secure cooperation and the necessary information to finalize the audit.

- (9) See IRM 4.23.3.6.4.2, Examination of Prior and Subsequent Returns, for instructions on secondary/follow-up appointments.

4.23.3.6.4.1
(02-25-2021)
Scheduling the Initial Appointment LB&I Team Audits

- (1) In LB&I team audit cases, the initial appointment is set in conjunction with the team lead following established procedures. In instances where the LB&I Income Tax Team issues the initial contact letter, the Employment Tax Specialist will use Letter 3850-A, Employment Tax Examination Notification, to notify a taxpayer that the employment tax returns have been opened for examination. Letter 3850-A must be issued for each distinct employment tax EIN opened for examination by the Employment Tax Specialist.
- (2) Pub 1, Your Rights as a Taxpayer, and Notice 609, Privacy Act Notice, must be included with the exam notification letter. Pub 5146, Employment Tax Returns: Examinations and Appeal Rights, will also be mailed with the exam notification letter if not provided during the opening conference. Workpapers and the Activity Record should include when and how these documents were provided to the taxpayer.

4.23.3.6.4.2
(02-25-2021)
Examination of Prior and Subsequent Returns

- (1) For guidance on opening prior and subsequent returns for a current employment tax audit, refer to:
- IRM 4.10.5.3.2, Examination of Prior and Subsequent Returns, and
 - IRM 4.10.2.7.1.2, Determining the Scope of an Examination - Current, Prior and Subsequent Years.

4.23.3.6.5
(11-19-2018)
Contact With Taxpayers

- (1) To avoid unauthorized disclosures of return information, immediately identify the taxpayer or his/her authorized representative before disclosing tax information. For such purposes examiners must know and document with whom they are speaking, including the complete name, title, and the purpose of the call/contact. For further information, see IRM 21.1.3.2.3, Required Taxpayer Authentication.
- (2) Section 3705 of the Internal Revenue Service Restructuring and Reform Act (RRA 98) requires that during personal and telephone contacts and on all manually generated correspondence by an employee working tax related issues, the employee's title (e.g., Mr., Mrs., Miss), first name, last name, and unique identification number must be provided. This requirement ensures that taxpayers are able to contact the appropriate employee to address any further questions they may have about their tax matter. For additional information, see IRM 4.10.1.2.2.2, Employee Contact Information.
- (3) Provide Pub 5146, Pub 1, and Notice 609 to the taxpayer at the initial appointment if not provided as enclosures with the appointment letter.

- (4) If the examination is to address worker classification issues, Publication 1976, Do you Qualify for Relief under Section 530?, must be provided to the taxpayer before initiating any worker classification or IRC 7436 wage issue examination. See IRM 4.23.5.3.1, Section 530 Relief.
- (5) The initial interview is an important part of the examination and/or compliance process. An initial interview must be conducted except in special circumstances, such as:
 - Undeliverable appointment letters; IRM 4.10.2.8.4, Undeliverable Initial Contact Letters,
 - Unlocatable taxpayers; IRM 4.10.2.8.5, Using Credit Bureau Information to Locate Taxpayers, or
 - Uncooperative taxpayers; IRM 4.10.2.8.6, Case Closing Procedures if the Taxpayer Cannot be Located.

Note: In LB&I Team Audit examinations where it is not practical to hold an initial interview; the examiner will follow the direction of the Team Lead on obtaining the necessary information to conduct the employment tax examination.

- (6) When an interview cannot be conducted, document the reasons in the case file. In situations where taxpayers are being uncooperative, examiners must discuss the use of a summons with their manager before making the decision to issue a report based on the available information.
- (7) Examiners should ensure a full interview is conducted to establish that the taxpayer is in substantial compliance with all employment tax laws and filing requirements. Do not limit the interview to the classified items if facts developed during pre-contact or initial contact indicate other issues may be present.
- (8) In the initial interview or opening conference:
 - a. The first few minutes should be spent explaining the process and taxpayer rights and to confirm and document receipt of Pub 1. Pub 1 fulfills the requirement in IRC 7521(b) that taxpayers be informed of the process and their rights under such process at or before the initial interview.
 - b. If the taxpayer has not received Pub 1, furnish the publication before proceeding with the initial interview.
 - c. Ensure that other provisions of IRC 7521, Procedures Involving Taxpayer Interviews, which affect taxpayer interviews are addressed. See IRM 4.23.3.6.6, Taxpayer Rights, below.
- (9) Do not settle tax due, or agree not to examine a taxpayer where noncompliance is known, in exchange for prospective compliance. Where settlement of tax appears to be advantageous to Service objectives, Area Counsel should be contacted for assistance. On LB&I coordinated industry cases, the attorney assigned to the case should be contacted for advice. In situations where execution of a closing agreement is warranted to resolve an issue, Counsel will assist in providing the appropriate language.

4.23.3.6.6
(11-19-2018)

Taxpayer Rights

(1) Under IRC 7521, the taxpayer has a right to:

- a. Receive, in non-technical language, an explanation of the rights available at each step of the examination process. This explanation must be furnished before an initial interview. Pub 1, Your Rights as a Taxpayer, was developed to meet this requirement. Routine telephone calls initiated by the taxpayer or the Service are not considered initial interviews. Pub 1 explains the procedures covering examination of tax returns and appeal rights and should be furnished to all taxpayers. Examiners must ensure the taxpayer has a full understanding of the examination process. First, at the beginning of an examination, ask the taxpayer whether they have any questions regarding the audit process, regular selection procedures, or appeal rights. Second, if the taxpayer does have questions, give clear and concise explanations. Third, advise the taxpayer of various court remedies available for employment tax issues: All post-assessment employment tax cases can be heard in a U.S. District Court or the U.S. Court of Federal Claims. Some employment tax cases can be heard by the U.S. Tax Court before assessment is made if they involve IRC 7436 issues.
- b. Consult with a representative who is currently authorized to represent taxpayers under rules provided in Treasury Department Circular 230, "Regulations Governing the Practice of Attorneys, Certified Public Accountants, Enrolled Agents, Enrolled Actuaries, Enrolled Retirement Plan Agents and Appraisers before the Internal Revenue Service". If taxpayers clearly state, during an interview, that they wish to consult with a representative, suspend the interview until the representative is involved. In cases where this process is abused (e.g., repeated suspension of interviews to contact a representative) an administrative summons may be issued. A taxpayer cannot be required to accompany an authorized representative to an examination interview in the absence of an administrative summons. However, the taxpayer's voluntary presence at the interview can be requested through the representative as a means to expedite the process.
- c. Notice 89-51, 1989-1 C.B. 691, contains guidance for allowing the taxpayer to audio record any in-person interview relating to the determination or collection of any tax as long as there is a 10-day advance notification. For information on taping interviews by either the taxpayer or the Service, see IRM 4.10.3.3.6, Requests to Audio Record Interviews.

Note: Taxpayers have no right to make a video recording, and it is IRS policy to not allow video recordings.

- (2) The Taxpayer Advocate Service (TAS) is an independent organization within the IRS. TAS helps taxpayers whose problems with the IRS are causing financial difficulties; who have tried but have not been able to resolve their problems with the IRS; and those who believe an IRS system or procedure is not working as it should. Pub 1546, Taxpayer Advocate Service - We Are Here to Help You, provides contact and additional information.
- (3) Refer taxpayers to TAS when the contact meets TAS criteria (see IRM 13.1.7, Taxpayer Advocate Case Processing - TAS Case Criteria) and the taxpayer's issue cannot be resolved the same day. "Same day" cases include those the examiner can completely resolve in 24 hours, as well as cases in which the examiner has taken steps within 24 hours to resolve. Do not refer same day

cases to TAS unless the taxpayer asks to be transferred to TAS and the case meets TAS criteria. Refer to IRM 13.1.7.4, Same Day Resolution by Operations for additional requirements before referring a same day case to TAS.

- (4) All inquiries being referred to TAS should be documented on Form 911, Request for Taxpayer Advocate Service Assistance (And Application for Taxpayer Assistance Order), or Form e-911, and forwarded to TAS immediately.

4.23.3.6.6.1
(02-25-2021)

Third-Party Contacts

- (1) Pub 1, Your Rights as a Taxpayer, no longer satisfies the advance notice requirement of IRC 7602(c)(1). General notice procedures now require employees to:

- Issue advance notice of third-party contacts (see below),
- Intend, at the time such notice is issued, to contact persons other than the taxpayer (the notice must state such intent),
- Specify in the notice the time period, not to exceed one year, within which IRS intends to make the third-party contact(s), and
- Send the notice at least 45 days before contacting a third party.

Note: The notice may be re-issued for an additional one-year time period if there remains a need to contact third-parties.

- (2) In all cases involving third party contact notices provided after August 15, 2019, or in which contacts with third parties will occur after August 15, 2019, a notice meeting the new requirements must be provided and no contact with a third party can be made until the 46th day following the date of the notice.
- (3) Notice should be made by using Letter 3164-E, Third Party Contact.
- (4) Additional information is available at:
 - IRM 25.27.1, Third-Party Contact Program
 - IRM 4.11.57, Examining Officers Guide - Third Party Contacts
 - IRM 4.10.1, Overview of Examiner Responsibilities
 - IRM 4.10.2, Pre-Contact Responsibilities
- (5) Document the case history/activity record with the date of mailing or personal delivery of the notice discussed in (3) above. In addition, provide the date that Form 12175, Third Party Contact Report Form, was prepared and forwarded IRM 4.23.3.6.5, Contact with Taxpayers, to the Third Party Contact Coordinator. See IRM 4.23.3.6.4, Scheduling the Initial Appointment, and IRM 4.23.3.6.5, Contact with Taxpayers, for additional requirements.

4.23.3.6.7
(11-19-2018)

Third Party Authorization/Power of Attorney

- (1) Accountants, attorneys, enrolled agents or other representatives, from whom a taxpayer has requested assistance on tax problems, may submit inquiries to the IRS to assist in clarifying issues with their client. To authorize a third party reply, the representative may submit a Form 2848, Power of Attorney and Declaration of Representative, (POA), or Form 8821, Tax Information Authorization, (TIA). The examiner will ensure that the authorization or a similar privately designed form is properly executed. See IRM 4.11.55.2.6, Authorized Forms, and IRM 4.11.55.2.7, Receipt of POA or TIA Form, for additional guidance.
- (2) Upon receipt of a POA/TIA, the examiner must submit a copy of the form to a Centralized Authorization File (CAF) Unit within five workdays of receipt. See

IRM 21.3.7.1.3, Audience-Processing Sites (CAF Function), to determine where to send the POA/TIA. The original or a copy of the POA/TIA should also be retained with the case file.

Note: Original documents, photocopies, or documents submitted by facsimile transmission (FAX) are acceptable for processing.

- (3) Forwarding the POA/TIA to the CAF Unit will trigger required actions to ensure input of a POA code to the entity on the appropriate master file or non-master file and will result in subsequent mailings of copies of computer-generated communications to the authorized representative.
- (4) POAs/TIAs filed for specific issues are not to be detached from the related document and are not sent to the CAF Unit unless the document authorizes specific return(s) and specific return periods in addition to the specific issue. In this case, a copy of the POA/TIA should be sent to the CAF Unit to input the return portion. Examples of specific issues include, but are not limited to, the following:
 - Form 843, Claim for Refund and Request for Abatement,
 - Form 966, Corporate Dissolution or Liquidation,
 - Form W-4, Employee's Withholding Allowance Certificate,
 - Form 4361, Application for Exemption from Self-Employment Tax for Use by Ministers, Members of Religious Orders and Christian Science Practitioners,
 - Form SS-4, Application for Employer Identification Number, and
 - General Power of Attorney or Durable Power of Attorney. These powers of attorney usually do not contain sufficient information to process on CAF. If a general or durable power of attorney is submitted, attach a completed Form 2848 (POA), and send **both** forms to the CAF Unit for processing.
- (5) Occasionally, the POA of record states he or she is no longer representing the taxpayer, or the taxpayer indicates they wish to cancel the existing POA. If the POA withdraws from the representation, or the taxpayer revokes the POA's authority, the CAF record will need to be updated to delete the existing POA. All revocations or withdrawals must be in writing. The taxpayer's signature and date are required to process a revocation. The representative's signature and date are required to process a withdrawal. Such signed statements will generally be sent to the CAF Unit.

Note: If the power of attorney is for a specific matter, the revocation or withdrawal is sent to the IRS office handling that matter.

See the instructions to Form 2848 for additional details about how to properly revoke or withdraw.

- (6) The Form 8821 does not authorize a representative to sign documents on behalf of the taxpayer or to represent the taxpayer before Appeals.

4.23.3.6.7.1
(11-19-2018)

**Enclosures with
Correspondence to
Representatives and
Appointees**

- (1) Blank forms, notices, and publications available on the Product Catalog Information page, <http://publish.no.irs.gov/catlg.html> should not be sent to the taxpayer's representative or appointee, including, but not limited to:
 - Pub 5146, Employment Tax Returns: Examinations and Appeal Rights
 - Form 9465, Installment Agreement Request
 - Form 12203, Request for Appeals Review
 - Notice 609, Privacy Act Notice
 - Pub 1, Your Rights as a Taxpayer
 - Pub 1035, Extending the Tax Assessment Period
- (2) Only copies of letters and other forms and documents addressed or specific to the taxpayer should be enclosed with Letter 937, Transmittal Letter for Power of Attorney. Examples of other forms and documents addressed or specific to the taxpayer include, but are not limited to:
 - Form 4564, Information Document Request
 - Form 872, Consent to Extend the Time to Assess Tax
 - Form SS-10, Consent to Extend the Time to Assess Employment Taxes
 - Form 2504, Agreement to Assessment and Collection of Additional Tax and Acceptance of Overassessment (Employment Tax Adjustments Not Subject to IRC 7436)
 - Form 4549, Income Tax Examination Changes
- (3) The enclosure section of Letter 937, Transmittal for Power of Attorney, should indicate the specific enclosures included with Letter 937. For example, if Letter 3572, SBSE Office Exam Call-Back Appointment Letter, is enclosed with Letter 937, the examiner should check the "Letter(s)" box and type "3572" in the fillable field.
- (4) This guidance is consistent with the instructions for both Form 2848 and Form 8821, which state that representatives and appointees will **not** receive forms, publications, and other related materials with correspondence.
- (5) Additional information can be found at:
 - IRM 4.10.8.2.3, Issuance of Audit Reports,
 - IRM 25.27.1.3.1, TPC Notification Procedures, and
 - IRM 25.6.22, Extension of Assessment Statute of Limitations by Consent.

4.23.3.6.7.2
(11-19-2018)

**Bypassing a Taxpayer's
Representative**

- (1) There may be occasions when it becomes necessary to bypass the taxpayer's representative and communicate directly with the taxpayer. IRM 4.11.55.4, By-Pass of a Representative, provides detailed examination information on bypass procedures.

4.23.3.6.7.3
(11-19-2018)

**Compromised or
Potentially
Compromised CAF
Number**

- (1) IRS personnel may be made aware of potentially fraudulent CAF activity through taxpayer contact or become aware during their normal duties and/or case handling.
- (2) All IRS personnel should report compromised or potential compromised CAF numbers to the CAF Unit for action or further review.
- (3) For further information, see IRM 21.3.7.5.5.3, How To Report a Compromised or Potentially Compromised CAF Number.

4.23.3.6.8
(11-19-2018)
Examination Control Updates

- (1) Form 5348, AIMS/ERCS Update, (or Form 5595, TE/GE Update, in RCCMS) is used with examination audit labels to:

- Update status code,
- Update statute date,
- Update project code, and
- Update amount of claim.

These updates are input on ERCS by the Shared Administrative Assistant or clerk.

- (2) Form 5348, AIMS/ERCS Update, (or Form 5595, TE/GE Update, in RCCMS) is used with examination audit labels to:

- Re-establish closed returns,
- Update the AIMS Assignee Code (AAC) (this would only be completed if the AAC is correct on ERCS and the AAC on AIMS is incorrect),
- Correct tracking codes,
- Generate a follow-up request for a missing return, and
- Request additional audit or address labels.

Forward the Form 5348 to your local AIMS/ERCS Analyst for input.

- (3) Instructions on the use of Form 5348 can be found in IRM 4.4.34.4, Items that can be Updated/Corrected/Deleted and Form to Use. Form 5348 will be submitted to the shared administrative assistant for input on ERCS.

4.23.3.6.9
(11-19-2018)
Request For Terminal Action, Form 4844

- (1) Form 4844, Request for Terminal Action, will be completed where the results of a compliance check or examination reveal that the taxpayer has filing requirements that are not currently on IDRS. Document 6209, IRS Processing Codes and Information, lists the correct codes for BMF Filing Requirements.

4.23.3.6.10
(11-19-2018)
Time Reporting

- (1) Accurate time and activity reporting is essential to effective Employment Tax Program planning, budgeting and evaluation.
- (2) For information on time reporting in IMS, see IRM 4.23.4.4.4, Charging Time on Cases/Returns and Issues.
- (3) For those employees working mixed inventories, time will be charged to the appropriate activity codes. Activity codes can be found in Chapter 12, "Examination," of Document 6209, IRS Processing Codes and Information. Also, see IRM 4.9.1, Examination Technical Time Reporting System and Procedures, Outline of System, and Exhibits for complete explanations.

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Exhibit 4.23.3-1 (11-19-2018)

Guidelines for Evaluation of Referrals and Income Tax Returns

Guidelines for Evaluation of Referrals and Income Tax Returns
(1) Information from an income tax return can reveal employment tax issues in a number of areas:
a) Compensation of corporate officers can be shown as "0" but a review of the Form 1120 may reveal that the officers have taken draws, dividends, professional fees, administrative fees, etc., to avoid reporting taxable wages.
b) Compensation of corporate officers can be shown as "0" but a review of the Form 1120 may reveal that the officers have spent 100 percent of their time in the operation of the business.
c) Schedules for "other deductions" often disclose bonuses to officers and employees. Payments to consultants are often listed on these schedules.
d) The reconciliation of accounts often shows loans and advances to corporate officers which may be salary in disguise.
e) Cost of Goods Sold often reveals labor and wage costs which may not appear on Forms W-2 and/or Forms 1099.
f) A service organization reporting cost of labor in cost of goods sold is suspect.
(2) Reconciliation of the Forms 941/940/W-2 and the income tax return often highlights a discrepancy.
(3) Taxpayers may file Form 940 but no Forms 941. Tying this information into the tax return may show a discrepancy.
(4) Reconcile labor deducted on the income tax return with Forms W-2 and Forms 1099 issued. Any discrepancy may mean an excessive deduction for wages and an adjustment. If the accrual method of accounting is used, a reconciliation will need to be made to make the income tax return information comparable to the Forms 941 and 1099.
(5) Large changes in the gross profit percentage $[(\text{Sales} - \text{Cost of Good Sold}) \div \text{Sales}]$ from one year to another may warrant further explanation by the taxpayer.
(6) The PMFOL provides a summary of transcript information concerning the number of Forms 1099 filed and the dollar amount of these forms. This figure can be compared to the various wage figures reported on the tax return for possible under-reporting. Note: No Record of filing or filing late can eliminate the safe haven provided by section 530 if this becomes an issue.
(7) Researching the particular industry will indicate the pros and cons of worker classification issues and provide a basis for evaluating the likelihood of successfully challenging an issue.
(8) Interviews of third party contacts (particularly the individual supplying the lead information) can provide additional information to ensure the correct entity has been identified, provide the number and types of workers, the possible amount of labor payments mis-classified, and other information that will assist in assigning a priority to the lead. However, before contacting third parties, ensure the provisions of IRC 7602(c), "Notice of Contact with Third Parties," are followed.

Exhibit 4.23.3-1 (Cont. 1) (11-19-2018)**Guidelines for Evaluation of Referrals and Income Tax Returns****Guidelines for Evaluation of Referrals and Income Tax Returns**

(9) If no internal information can be obtained, the initial lead evaluation process is restricted to the information contained on the lead, interviews of third parties, general industry research, and past experience in the industry. If the lead warrants additional consideration after the above steps have been taken, the lead may, at the manager's discretion, be assigned to an examiner for personal contact with the taxpayer.