



MANUAL TRANSMITTAL

Department of the Treasury
Internal Revenue Service

4.23.12

JUNE 13, 2023

EFFECTIVE DATE

(06-13-2023)

PURPOSE

- (1) This transmits revised IRM 4.23.12, Employment Tax - Delinquent Return Procedures.

MATERIAL CHANGES

- (1) This IRM was revised to reflect the following changes:

SUBSECTION	CHANGE
IRM 4.23.12.1.3	Added that Chief, Employment Tax Examination, is responsible for ensuring examiners follow the guidance included in this IRM.
IRM 4.23.12.1.6	Added information on Taxpayer Advocate Service (TAS) resources and added updated Taxpayer Bill of Rights (TBOR) content.
IRM 4.23.12.2	Split paragraph (7) to create a new subsection IRM 4.23.12.2.1.
IRM 4.23.12.2.1	New subsection, Delinquent Information Return and Employee Wage Statements. Additional references were added.
IRM 4.23.12.4.2(1)	Added a note with a reference to IRM 3.10.72.6, Received Date Stamp. Added a note for the temporary deviation allowed by Interim Guidance Memorandum NHQ-01-1121-0004.
IRM 4.23.12.4.2(5)	Moved paragraph to a new subsection 4.23.12.4.2.1, Return is Substantially Correct.
IRM 4.23.12.4.2(7)	New paragraph created by placing items (c), (d), (e), and (f) from previous paragraph (6).
IRM 4.23.12.4.2.1	New subsection, Return is Substantially Correct. Added information for the issuance of Letter 1024-T, Employment Tax Return Accepted as Filed.
IRM 4.23.12.4.3	Added a note to paragraph (1) for clarification.
IRM 4.23.12.9	Renamed section from "Retroactive Enforcement" to "Delinquent Return Enforcement."

- (2) Editorial and technical changes have been made throughout this section.

EFFECT ON OTHER DOCUMENTS

This material supersedes IRM 4.23.12, dated June 14, 2021. Interim Guidance Memorandum SBSE 04-0122-0004, Temporary Guidance on Additional Use of Letter 1024-T, issued January 27, 2022, has been incorporated into this IRM.

AUDIENCE

This section contains instructions and guidelines for all LB&I, TE/GE, and SB/SE employees when dealing with employment tax delinquent return issues.

Timothy J. Bilotta
Acting Director, Specialty Examination Policy
Small Business/Self-Employed Division

4.23.12

Delinquent Return Procedures

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4.23.12.1
(06-14-2021)
Program Scope and Objectives

- (1) **Purpose:** This section outlines the procedures for delinquent and substitute returns for employment tax returns, including those filed for reporting the taxes due under the following:
 - Federal Insurance Contributions Act (FICA)
 - Federal Unemployment Tax Act (FUTA)
 - Railroad Retirement Tax Act (RRTA)
 - Federal Income Tax Withholding (FITW)
 - Backup Withholding (BUWH)
- (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:D-CE:E:HQ:ECS:S:ETEGCS:EWSD)
 - Specialty Examination - Employment Tax (SE:S:DCE:E:SE:ET)
 - Specialty Examination Policy, Employment Tax Policy (SE:S:DCE:HQ:SP:EMTP)
- (6) **Program Scope:** The mission of Employment Tax Policy is to establish effective policies and procedures, and to support compliance with employment tax laws.

4.23.12.1.1
(11-29-2018)
Background

- (1) In the interest of reducing multiple contacts with taxpayers, examiners will determine whether the taxpayer is fulfilling all Federal tax obligations during the course of either a compliance check or the examination of an assigned return. This IRM describes procedures for delinquent and substitute for returns.

4.23.12.1.2
(06-14-2021)
Authority

- (1) 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 IRS personnel regardless of operating division. The Policy Statements found in IRM 1.2.1, Servicewide Policies and Authorities, Servicewide Policy Statements, apply to all employment tax issues and examinations. Examiners should review these Policy Statements to properly perform their examination duties.

- (3) A website, Search Servicewide Delegation Orders, located at <https://irm.web.irs.gov/imd/del/search.aspx> provides a searchable list of Servicewide Delegation Orders issued by the Commissioner of the Internal Revenue, or on their behalf by either of the deputy commissioners. Delegation Orders pertaining to each IRS business process can be found in IRM 1.2.2, Servicewide Policies and Authorities, Servicewide Delegations of Authority.
- (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 IRS greatly reduces philosophical and procedural inconsistencies.

4.23.12.1.3
(06-13-2023)
Responsibilities

- (1) Director, Specialty Examination Policy, is responsible for the procedures and updates addressed in this IRM.
- (2) Director, Examination Specialty, is the executive responsible for examination operational compliance.
- (3) Chief, Employment Tax Examination, is responsible for ensuring examiners follow the guidance included in this IRM.

4.23.12.1.4
(11-29-2018)
Program Objectives and Review

- (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 1.1.16.5.3.3, Employment Tax Examination and for Employment Tax Policy, found in IRM 1.1.16.5.5.2.2, 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: Program Manager of Employment Tax Policy is responsible for reviewing the information in this IRM annually to ensure accuracy and promote consistent tax administration.

4.23.12.1.5
(06-14-2021)
Acronyms

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

Acronym	Definition
AIMS	Audit Information Management Systems
ASED	Assessment Statute Expiration Date
CCP	Centralized Case Processing
EIN	Employer Identification Number
EO	Exempt Organizations
ERCS	Examination Returns Control System

Acronym	Definition
ETER	Employment Tax Examiner's Report
FEA	Fraud Enforcement Advisor
FICA	Federal Insurance Contributions Act
FITW	Federal Income Tax Withholding
FSL/ET	Federal, State & Local / Employment Tax Area
FUTA	Federal Unemployment Tax Act
ITG	Indian Tribal Governments
LB&I	Large Business & International
MF	Master File
NMF	Non-Master File
RCCMS	Reporting Compliance Case Management System
SC	Source Code
SFR	Substitute for Return
TC	Transaction Code
TCO	Tax Compliance Officer
TE	Tax Examiner

4.23.12.1.6
(06-13-2023)

Related Resources

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

Source	Title	Description of Guidance
IRM 4.23	Employment Tax IRM	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 4.75.22	Exempt Organizations Examination Procedures - EO Delinquent, Amended and Substitute for Return Procedures	Exempt Organizations Examination Procedures - EO Delinquent, Amended and Substitute for Return Procedures
IRM 25.1.3.3	Preparation of Form 2797 - Referral Report of Potential Criminal Fraud Cases	Preparation of Form 2797 - Referral Report of Potential Criminal Fraud Cases
IRM 1.2.1.4.2	Policy Statement 3-2 (Formerly P-2-7)	Reasonable cause for late filing of return or failure to deposit or pay tax when due
IRM 1.2.1.4..5	Policy Statement 3-5 (Formerly P-2-11)	Delinquency Penalty on Timely But Unsigned Return
IRM 1.2.1.6.18	Policy Statement 5-133	Refusal to File Procedures

(2) Other helpful information sources 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 home page: <https://srs.web.irs.gov/>.

- A list of SB/SE Employment Tax Policy Analysts, including their contact information and program assignments, is found at: *Employment Tax Policy Contacts*.
- The web site “Exam Guidance Procedures” at: <https://portal.ds.irsnet.gov/sites/vl014/lists/exam%20guidance%20procedures/landingview.aspx> contains information relating to employment tax case procedures.

- (3) 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). For additional information about the TBOR. See IRC 7803(a)(3). For additional information about TBOR, see Pub 5170, Taxpayer Bill of Rights, www.irs.gov/taxpayer-bill-of-rights or <https://irssource.web.irs.gov/SitePages/TaxpayerBillOfRights.aspx>.
- (4) The Taxpayer Advocate Service (TAS) is an independent organization within the IRS, led by the National Taxpayer Advocate. Its job is to protect taxpayers’ rights by striving to ensure that every taxpayer is treated fairly and knows and understands their rights under the TBOR. TAS offers free help to taxpayers, including when taxpayers face financial difficulties due to an IRS problem, when they are unable to resolve tax problems they have not been able to resolve on their own, or when they need assistance to address an IRS system, process, or procedure that is not functioning as it should. TAS has at least one taxpayer advocate office located in every state, the District of Columbia, and Puerto Rico.
- (5) Examiners should consider the disclosure and privacy provisions when preparing agreed and unagreed case reports. For further information, see the Privacy, Government Liaison and Disclosure (PGLD) maintained knowledge base at <https://portal.ds.irsnet.gov/sites/vl003/pages/default.aspx>.

4.23.12.2

(06-13-2023)

**Overview: Initial
Delinquency Procedure**

- (1) When an examiner discovers during any examination that a taxpayer may have failed to file required federal tax returns, he/she will, before soliciting any returns, determine the taxable periods and type of returns for which the taxpayer may be liable. The following information is available to assist in making this determination:
- **BMFOLI:** Shows the history of filing or non-filing, by tax period and Master File Transaction code (MFT).
 - **INOLE:** Shows the current filing requirements for each taxpayer.
 - **IRPTRI:** Shows an online summary of income documents filed by the taxpayer, with some specific payee information. Forms 1042–S, W–2, W–2G, 1099–MISC, 1099–NEC, and 1099–R are available. IRPTRI may indicate the number of years for which the corresponding employment tax returns are due.
 - **BMFOLU:** Shows a summary of Forms W-2 filed by the taxpayer and may indicate the number of years for which the corresponding employment tax returns are due.
 - **BMFOLE:** Shows if the taxpayer has gone out of business and taken steps to close the account by appropriately marking any returns as “final”. Shows historical 944 cache information to help determine prior year employment tax filing requirement.
 - **TRDBV:** Shows whether the taxpayer has filed any returns which went unpostable for some reason. For example, the taxpayer has a Form 944

filing requirement for a specific tax year and the taxpayer filed Forms 941 instead. The examiner should secure the Form 944 for that year.

- (2) If a return or returns are determined to be required, the examiner will ascertain the reasons why the taxpayer failed to file the required returns and determine whether any indications of fraud exist.
- (3) When information is developed during an examination that indicates the taxpayer's failure to file a required return or returns is willful, or if there is any other indication of fraud, discuss the case with the group manager. If the group manager concurs that the possibility of fraud exists, the Fraud Enforcement Advisor (FEA) will be contacted. In such cases, do not solicit delinquent returns, payment of tax, or any agreement from the taxpayer. If the possibility of fraud exists and the taxpayer furnishes delinquent returns to the examiner, see IRM 25.1.7.2 (3), Pre-screening Non-filers, for guidance. For additional information, see:
 - IRM 25.1.7, Fraud Handbook, Failure to File
 - IRM 20.1.2, Penalty Handbook, Failure to File/Failure to Pay Penalties
 - IRM 25.1.2.7, Employment Tax Fraud
- (4) If no indications of fraud are present, advise the taxpayer that he/she is required to file all delinquent returns without regard to the number of years or taxable periods involved. In addition, all taxes, penalties, and interest are immediately due. The taxpayer will be asked to deliver the returns promptly to the examiner. Fully document the taxpayer's reasons for the non-filing of the returns in the case file. The examiner will request payment of the liabilities and explain the taxpayer's options for collection alternatives (for example, installment agreement, offer-in-compromise). The examiner should also be prepared to discuss services available from the Taxpayer Advocate Service (TAS), if necessary.
- (5) The examiner will set a specific date for receiving the return(s). The date should be reasonable in light of the facts and circumstances in the case, the number of employees involved, and other factors which may extend the time necessary to prepare a proper and correct return. Inform the taxpayer that failure to tender the delinquent return(s) by the specified date will be considered a refusal to file.
- (6) When a taxpayer is advised to file all required delinquent returns but refuses to file, or states he/she is unable to file all of the returns, a determination will be made as to the extent the filing requirements should be enforced. This determination must be consistent with the criteria in Policy Statement 5-133, Delinquent returns - enforcement of filing requirements, found at IRM 1.2.1.6.18. Delinquency procedures are normally enforced for a six-year period of delinquency. Any deviation from the general six-year guideline requires managerial approval.

4.23.12.2.1
(06-13-2023)

**Delinquent Information
Returns and Employee
Wage Statements**

- (1) For delinquent information returns and employee wage statements, refer to:
 - IRM 4.23.8.10, Delinquent Forms W-2/W-2c,
 - IRM 4.23.8.10.4, Delinquent Forms 1099 Secured by Examiner,
 - IRM 4.23.9.13, Penalties for Failure to File Certain Information Returns or Furnish Certain Statements,
 - IRM 20.1.7.5, Delinquent Information Return Procedures, and

- Document 13267, Field Procedures for Securing and Processing Information Return Penalties.

4.23.12.3
(09-16-2011)
Delinquent Returns With No Tax Due

- (1) There are some delinquent employment tax returns filed on which no balance due was originally reflected, however, as a result of an examination, additional tax is proposed. Since the returns as originally filed reflected no taxes due, they were processed without considering the delinquency features or without securing a statement from the taxpayer as to the cause for delay in filing. The examiner will secure a statement from the taxpayer and determine if reasonable cause exists. The decision as to whether to assert delinquency penalties will be made based on this statement. Examiner comments as to the assertion or non-assertion of penalties will be incorporated into the report transmittal and workpapers.

4.23.12.4
(02-02-2015)
Controlling and Processing Delinquent and Substitute for Returns

- (1) Employment tax non-filer cases can be processed using either Delinquent Return or Substitute for Return (SFR) procedures.
Note: Most employment tax non-filers worked by specialists within the SB/SE Employment Tax Program will follow the SFR procedures for assessments; however, this does not preclude the examiner from following the Delinquent Return procedures when appropriate. It is important to remember, however, that **once SFR procedures have been started, they cannot be changed.** The return controlled with an SFR must be processed as such to final closure. Procedures for using either Delinquent or SFR processes are detailed below.

4.23.12.4.1
(09-19-2016)
Securing Controls using either Delinquent or SFR Procedures

- (1) The procedures for requesting controls will vary depending on how the case will be worked.
- (2) For delinquent returns procedures, the examiner will complete Form 5345-D, Examination Request-ERCS (Examination Returns Control System) Users, to establish a non-filer via ERCS and include the following entries:

Issue	Answer
Do you want the original return?:	"N" for "no", since there is no return to request.
Do you want Labels?:	"Y" for yes or "N" for no.
Special Message/Push Code:	Enter "020" to establish Delinquent Return controls. A push code must be used when establishing AIMS controls if there is no Transaction Code (TC) 150 posted on Master File. The Push Code holds the TC 424 at Master File until a TC 150 posts.

Issue	Answer
Source Code (SC):	Enter the appropriate source code which depends on the origination of the examination. If the employment tax return(s) are a referral via the Specialist Referral System, use SC "24" for the primary quarter and "44" for all related non-filed periods being established. If the non-filed periods are related to another case (for example income tax, other employment tax case), the examiner will use SC "44" for all periods.
Reason for Request:	Enter a reason consistent with the Push Code used. For Push Code "020" enter "DELINQUENT RETURN SECURED BY EXAMINATION".

Note: Exempt Organizations (EO) will follow the delinquent returns procedures in IRM 4.75.22, Exempt Organizations Examination Procedures - EO Delinquent, Amended and Substitute for Return Procedures, and establish controls in Reporting Compliance Case Management System (RCCMS).

Note: ITG Specialists will establish controls for SFR in RCCMS.

- (3) For Substitute for Return (SFR) procedures, the examiner will complete Form 5345-D, Examination Request-ERCS (Examination Returns Control System) Users, to establish a non-filer via ERCS and include the following entries:

Issue	Answer
Do you want the original return?:	"N" for "no", since there is no return to request.
Do you want Labels?:	"Y" for yes or "N" for no.
Special Message/Push Code:	Enter "036" if there is no TC 150 on the module. This push code will establish a TC 150 SFR. Enter "050" if there is a TC 150 SFR posted to the account but no return was secured and processed for the module. This will allow SFR non-filer controls to establish using an "EE" statute date.

Issue	Answer
Source Code (SC):	The appropriate source code will depend on the origination of the examination. If the employment tax return(s) are being opened as the original exam at the group level because it was received as a referral via the Specialist Referral System, the examiner will use SC "24" for the primary quarter and "44" for all related non-filed periods being established. If the non-filed periods are related to another case (for example income tax, other employment tax case), the examiner will use SC "44" for all periods.
Reason for Request:	Enter a reason consistent with the Push Code used. For Push Code "036" or "050", enter "EXAM/SFR".

Note: EO will follow the Substitute for Return (SFR) procedures in IRM 4.75.22 and establish controls in RCCMS.

Note: ITG Specialists will establish controls for SFR in RCCMS.

- (4) To secure controls when a taxpayer does not have a valid Employer Identification Number (EIN) for BMF:
- Request that the taxpayer submit Form SS-4, Application for Employer Identification Number, to secure an EIN.
 - Establish Non-Master File (NMF) controls using the SSN of the primary owner of the business as follows: "XXXXXXXXX-D". The NMF control provides AIMS/ERCS controls until an EIN is secured and allows the examiner to charge time to the case on ERCS.
 - After the EIN is secured, close the NMF control with a Disposal Code (DC) "28" and establish controls using the EIN. Use the option on ERCS to "Change a Non-Master File Return to a Master File Return" (see the ERCS Group Handbook chapter entitled "Correct or Display Records"). This option on ERCS will automatically submit an AM424 to request controls on the master file record and send an AMSOC with Disposal Code "28" to close the non-master file record on AIMS. This option also allows the time reported on the non-master file record and the start date of the non-master file record to automatically move to the master file record that is created.

Note: If a foreign entity is involved, see IRM 21.7.13.3.2.7, Foreign Entities - Definitions and Instructions, for procedures unique to these entities.

Note: EO will follow the procedures in 4.75.22.

Note: ITG Specialists will establish controls for an entity that doesn't have an EIN and then secure an EIN in RCCMS.

- (5) If the taxpayer refuses to request their own EIN, contact the campus Entity Control Section to obtain the assignment of a permanent EIN using procedures outlined in IRM 21.7.13.3.8, Receiving EIN Applications From Field Compliance.
- (6) Once the EIN is secured, follow the procedures for establishing controls using either (2) or (3) above.
 - SFR controls cannot be requested on a temporary or invalid EIN.
 - The case cannot be forwarded to Centralized Case Processing (CCP) for closing unless an EIN has been secured.

4.23.12.4.2
(06-13-2023)

Processing Delinquent Returns under either Delinquent or SFR Controls

- (1) Examiners securing delinquent returns will advise the taxpayer that all taxes, penalties, and interest are immediately due.

Note: To constitute a valid return that is sufficient to start the running of the statute of limitations, more information is required than just a taxpayer signature. The return must satisfy the substantial compliance test of *Beard v. Commissioner*, 82 T.C. 766, 777 (1984), *aff'd*, 793 F.2d 139 (6th Cir. 1986). See also Rev. Rul. 2005-59 and IRM 25.6.1.6.14, Criteria for Establishing a Statute of Limitations Period. This is true whether the return is prepared and submitted by the taxpayer or is prepared by the IRS and signed by the taxpayer under IRC 6020(a).

Note: For the procedures on IRS received date stamping or postmark dated stamping refer to IRM 3.10.72.6.1, Received Date Stamp.

Note: Examiners should ensure that copies of all secured delinquent returns are retained in the case file.

Note: A temporary deviation permits images of taxpayer signatures, and digital signatures, for prior-year (delinquent) tax returns secured through an examination or collection interaction. The temporary guidance shall be relied upon as long as the temporary guidance is in effect or extended by another directive. Refer to Interim Guidance Memorandum NHQ-01-1121-0004, (1) Approval to Accept Images of Signatures and Digital Signatures (2) Approval to Receive Documents and Transmit Encrypted Documents by E-mail dated October 31, 2021, for more information.

Caution: Returns which are not yet due to be filed, including extensions, should be filed in accordance with the instructions for the respective form.

- (2) The processing of a secured delinquent return will vary depending on what exam controls, delinquent or SFR controls, were used when establishing the tax period . The type of controls used will determine how to proceed with working and closing the exam.
- (3) If the examiner secures a delinquent return from the taxpayer after establishing controls using the Delinquent Return procedures outlined in IRM 4.23.12.4.1(2), refer to IRM 4.4.9.4, Delinquent Return Secured - No TC 150

Posted, for initial processing instructions for the delinquent return. Once the steps contained in IRM 4.4.9.4, through IRM 4.4.9.4.12.2, Assessment Statute Expiration Date (ASED), are completed, mail the delinquent return, Form 13133, Expedite Processing Cycle, and Form 3210, Document Transmittal, to Submission Processing at the appropriate campus listed in Exhibit 4.23.12-1, Delinquent Return Campus Mailing Addresses.

- If additional adjustments are necessary or the case cannot be closed within seven days, process the delinquent return as noted above in IRM 4.23.12.4.1(2) and continue to work on audit development. Wait until the delinquent return has posted (TC 150) before submitting the case for final closure.

- (4) If a valid delinquent return is secured after establishing SFR TC 150 is posted to master file (IRM 4.23.12.4.1(3)), the examiner must decide if the return submitted is substantially correct or if additional adjustments will be necessary to properly reflect wages.

Note: Any time a valid delinquent return is secured from the taxpayer after establishing SFR controls, do **NOT** follow IRC 6020(b) procedures outlined in IRM 4.23.12.4.3 **for that tax period**. Each employment tax period stands alone; therefore, some periods may fall under the IRC 6020(b) processing and others may not.

- (5) Upon receipt of a delinquent return after a SFR TC 150 has been established:

- a. Prepare Form 3177, Notice of Action for Entry on Master File, for each delinquent return. Enter an "X" in the box marked **other** and write "TC-971 AC-282 – Return Received Date MM/DD/YYYY" to update the Master File. Refer to IRM 4.4.9.6.1, TC 971 Action Code (AC) 282.
- b. Fax the Form 3177 to the Centralized Case Processing office at the number provided: <https://portal.ds.irsnet.gov/sites/vl051/Lists/ExamCentralizedCaseProcessingCCP/DispItemForm.aspx?ID=8>.

Note: The Form 3177 will result in updates to Master File to show that exam secured a delinquent return and updated the statute to 3 years from the date received.

Note: For additional information, see IRM 4.4.9.6, Delinquent Return Received After SFR TC 150 Posted at Master File and following.

Note: Employment tax case files can include a combination of returns for processing using the Delinquent Return procedures or SFR procedures, as each tax period stands alone.

- (6) If the return is substantially correct and the case can be closed within seven days of receipt see IRM 4.23.12.4.2.1, Return is Substantially Correct.
- (7) If a valid delinquent return is secured after establishing SFR controls and the case cannot be closed within seven days of receipt of the signed return, or if it is determined that the submitted return is not substantially correct process the delinquent return as a partial assessment within seven days of receipt. See IRM 4.23.10.15, Partially Agreed Cases, for partial assessment procedures.

Exception: If the delinquent return shows zero tax due, then no partial assessment is necessary.

Note: The examiner must verify that the partial is posted before closing the case.

- a. Fully develop any additional issues identified. Prepare and issue a report via normal procedures reflecting appropriate adjustments or no-changes.

Note: Because the delinquent return was processed as a partial agreement, the audit report will only include adjustments made to the amounts shown on the delinquent return.

- b. Close the case using the appropriate disposal code.
- c. Examiners will document in the comment section of the Form 3198, Special Handling Notice for Examination Case Processing, that the delinquent return was considered during the exam.

4.23.12.4.2.1
(06-13-2023)

Return is Substantially Correct

- (1) If the return is substantially correct and the case can be closed within seven days of receipt take the following actions.
- (2) If not already done, update the statute to properly reflect three years from the date of the delinquent return. Refer to IRM 4.23.12.4.2(5) for guidance.
- (3) Prepare an employment tax exam report using the appropriate Form 2504 to match the submitted return. This report does not need to be issued to the taxpayer provided the tax is equal to or less than the tax shown on the submitted returns.

Note: There is no need to obtain a signature on the exam report provided the computed tax on the report is equal to or less than the amount reported on the signed return submitted by the taxpayer.

- (4) Close the case using the applicable agreed disposal code (DC).

Note: TCOs and TEs are to use DC "03" only. Revenue agents may use either DC "03" or DC "04".

- (5) Letter 1024-T, Employment Tax Return Accepted as Filed, should be used when a taxpayer provides a delinquent return during an examination that is:
 - a. Accepted as filed and processed within seven days of receipt, or
 - b. Processed as a partial assessment with no additional tax assessment.

Note: Letter 1024-T has a "Show Selectable Paragraph Pages" button at the top. Examiners should use this button to select the paragraph(s) most appropriate for the taxpayer's situation.

Note: For additional uses of the Letter 1024-T see IRM 4.23.10.4.2, Additional Uses of Letter 1024-T.

4.23.12.4.3
(06-13-2023)

IRC 6020(b) Procedures for SFR Employment Tax Cases

- (1) IRC 6020(b) procedures **ONLY** apply when case files involving non-filed returns are closed without receipt of a signed return from the taxpayer. This is true no matter what type of controls (delinquent and/or SFR) were originally established.

Note: If delinquent return controls were originally established the examiner must establish SFR controls in order to close the case under 6020(b) procedures. Refer to IRM 4.4.9.5.2.2, Generating the SFR Using Form 5345, Examination Request (All Versions).

Note: EO will follow the procedures in IRM 4.75.22, Exempt Organizations Examination Procedures - EO Delinquent, Amended and Substitute for Return Procedures.

- (2) When signed returns are not received by the conclusion of the examination, the examiner must certify in accordance with IRC 6020(b) that the adjustments are to be treated as the return filed by the taxpayer for purposes of determining the Failure to Pay (FTP) penalty. See IRM 20.1.2.3.10, Substitute for Return—IRC 6651(g).
- (3) In SFR cases where a valid delinquent return is **NOT** submitted during the examination, the examiner must follow the IRC 6020(b) Certification Procedures outlined below:
 - 1. Prepare one Form 13496-A, IRC Section 6020(b) Certification for Employment Tax Returns, for each examined tax period where a signed return has not been submitted. Each quarterly Form 941 (and/or yearly Form 940, Form 943, Form 944, Form 945) constitutes a separate tax period.

Example:

Example #1
If there are three years of employment taxes for which SFRs for Forms 940 and Forms 941 must be prepared, fifteen Forms 13496-A must be prepared (twelve Forms 941 and three Forms 940).
On each Form 13496-A, fill in the information requested in the top four boxes.
On each Form 13496-A, check the box for the appropriate form (Form 4667 or Form 4668) that supports that SFR. For example, if an SFR is being prepared for a Form 940, the box for Form 4667 will be checked.
Each Form 13496-A must be signed and dated. The date must be on or after the date of the 30-day letter or agreed report.

- 2. Behind each Form 13496-A, place one copy of either Form 4667 or Form 4668 (whichever applicable) covering each examined tax period for which a Form 13496-A has been prepared. This becomes the SFR package.

Example:

Example #2
The SFR package for a one-year exam that includes four Forms 941 and one Form 940 would look like this (listed top to bottom):
Form 13496 – A, for Form 941 20XX03
Form 13496 – A, for Form 941 20XX06
Form 13496 – A, for Form 941 20XX09
Form 13496 – A, for Form 941 20XX12

Example #2
Form 13496 – A, for Form 940 20XX12
Form 4668 covering the four Forms 941 quarters
Form 4667 covering the one Form 940

3. Staple, clip, or rubber-band the SFR package together.
 4. The entire SFR package will be placed on top of the remaining workpapers and documents.
- (4) It is no longer necessary to include a copy of the Form 886-A, Explanation of Items, when using the Form 13496-A, nor is it necessary to make multiple copies of the supporting Forms 4667 and Forms 4668.
 - (5) Form(s) 5344 and attachments used by Centralized Case Processing (CCP) are no longer part of the SFR package. They are, however, still completed for use in final closing and will be the first document(s) behind the SFR package in the file.
 - (6) IRC 6020(b) procedures apply to all types of closures, in other words agreed, unagreed, or appealed.
 - (7) IRC 6020(b) procedures will never apply when a valid return is received from the taxpayer. This applies even if SFR procedures have already been initiated or if the valid return does not fully report tax due.
 - (8) The SFR is treated as a return filed by the taxpayer under IRC 6651(g) for purposes of determining the amount of the failure to pay penalty under IRC 6651(a)(2) or IRC 6651(a)(3). See IRM 4.23.9.10, Assertion of Failure to Pay Penalty, and IRM 4.23.9.11, Penalty for Failure to Make Timely Deposits, for procedures on failure to pay and failure to deposit penalties.
 - (9) Normal appeal procedures apply to all unagreed SFR cases.
 - (10) If the taxpayer executes a waiver the signature on the Form 2504 does **not** constitute a return under IRC 6020(a) and therefore does **not** commence the running of the assessment statute of limitations. See Rev. Rul. 2005-59. A waiver consists of the following:
 - Form 2504, Agreement to Assessment and Collection of Additional Tax and Acceptance of Overassessment (Employment Tax Adjustments Not Subject to IRC 7436),
 - Form 2504–T, Agreement to Assessment and Collection of Additional Employment Tax and Acceptance of Overassessment (Employment Tax Adjustments Subject to IRC 7436), or
 - Form 2504–S, Agreement to Assessment and Collection of Additional Tax and Acceptance of Overassessment (Employment Tax Adjustments Not Subject to IRC 7436; Worker Classification or Section 530 Issued Not Addressed in this Exam),

- 4.23.12.5
(02-02-2015)
Delinquent Tax Returns Secured (Other than Employment Tax Returns)
- (1) Stamp all secured delinquent returns with an official date stamp.
 - (2) If the secured delinquent returns are not within the examiner's responsibility (in other words no exam controls will be established), file the returns with the appropriate Campus address, as noted in the return instruction package for the secured return (for example Form 1040, Form 1120, and so on). Document the case activity record that the return(s) were secured and forwarded.
- Note:** Examiners should ensure that copies of the filed returns are retained in the case file.
- (3) **Referrals generated by SB/SE Employment Tax Examiners:** If the secured delinquent returns need to be screened further by the another function, complete Form 5346, Examination Information Report.
 - For SB/SE income tax referrals, send form in an email to *SBSE ET WSD Referrals (sbse.et.wsd.referral@irs.gov).
 - For any other referral, send directly to the appropriate function. For fraud referrals, see IRM 4.23.12.10, Referral to Criminal Investigation.
 - (4) Referrals generated by non-SB/SE examiners should follow their business-prescribed procedures.
- 4.23.12.6
(02-02-2015)
Penalty Determinations in Delinquent Return Cases
- (1) In cases where no return has been filed (or a delinquent return is secured), determine whether to assert the failure to file and failure to pay penalties. See IRM 1.2.1.4.2, Policy Statement 3-2 (Formerly P-2-7), for guidance regarding acceptable reasonable causes for failure to file. Document the recommendation for assertion or non-assertion of the penalties in the case file.
 - (2) Penalty recommendations for delinquent returns must be made whether or not the taxpayer agrees to the assertion of the penalties.
 - (3) The failure to file and failure to pay penalties are automatic penalties and will be asserted unless case processing is notified otherwise.
- 4.23.12.7
(02-02-2015)
Delinquency Penalty on Timely But Unsigned Return
- (1) It is the policy of the IRS not to assert a delinquency penalty if an unsigned tax return is timely filed by the taxpayer on the prescribed form and the form is accompanied by proper payment, provided that:
 - a. The taxpayer upon request subsequently files a proper return,
 - b. The facts surrounding the failure to sign the return clearly indicate there was no willful intent to disobey the taxing statute, and
 - c. Gross negligence is not involved.

See IRM 1.2.1.4.5, Policy Statement 3-5 (Formerly P-2-11).
 - (2) When it is necessary to rely upon a taxpayer's failure to sign a return in defense of the statute of limitations, the delinquency penalty may be asserted to support the IRS's position that the statutory period of limitations does not begin to run until a valid return has been filed.

- 4.23.12.8
(12-16-2008)
**Refusal to File
Delinquent Returns**
- (1) When a taxpayer is advised to file all required delinquent returns but refuses to file, states inability to file, or neglects to file within the time-frame set, a determination will be made as to the extent the filing requirements should be enforced. The application of enforcement procedures will depend upon the facts of each case. This determination must be consistent with the criteria in IRM 1.2.1.6.18, Policy Statement 5-133, and the guidelines outlined in IRM 4.23.12.9.
- 4.23.12.9
(06-13-2023)
**Delinquent Return
Enforcement**
- (1) The extent to which enforcement of delinquency procedures will be undertaken will depend upon the facts of each case. As a general rule, enforcement should not extend beyond six prior years. But enforcement for shorter or longer periods, or not at all, may be determined where such action appears to be in the best interest of the Government from the standpoint of reasonableness, salutary effect on compliance, and prudent deployment of resources. (See IRM 1.2.1.6.18, Policy Statement 5-133.)
- (2) Specific factors that should be taken into account include:
- a. Degree of flagrancy
 - b. Special need to enforce compliance in a specific area
 - c. Whether the delinquency involves trust fund monies collected but not paid over
 - d. Special circumstances peculiar to a specific taxpayer, class, industry or type of tax
 - e. Expenditure of resources required in relation to anticipated results in terms of revenue, provided there are no other overriding considerations
 - f. Period of enforcement used by other IRS activities in return-compliance programs in the same tax area
- (3) Delinquency procedures will generally be enforced if a taxpayer has failed to file a one-time return. In other cases when contact is made with a delinquent taxpayer, delinquency procedures should ordinarily be followed through for at least one period. However, the circumstances of each individual case must be taken into consideration. (Refusal-to-file cases referred to Examination or TE/GE after taxpayer contact has been made by examiners are required to be fully documented prior to such referral.)
- (4) If it is determined that enforcement should extend beyond a six-year period, the examiner will document the case file by outlining the facts of the case and the reasons why enforcement for the longer period is recommended. Such recommendations must receive managerial approval prior to enforcement.
- (5) If it is determined that delinquency procedures need not be enforced for the full period of the delinquency if less than six years, the case file must fully document justification for the shorter period. Such determination must receive managerial approval prior to enforcement except in cases where there would be no net tax due for the years for which delinquency procedures are not to be enforced.
- 4.23.12.10
(12-16-2008)
**Referral to Criminal
Investigation**
- (1) Cases are referred to Criminal Investigation by using Form 2797, Referral Report of Potential Criminal Fraud Cases. If a case involving a collateral examination results in a fraud referral, the affected examination areas will coordinate the referral. The general guidelines for fraud procedures are outlined in IRM 4.23.9.6, Employment Tax Fraud - General.

- (2) Instructions for completing Form 2797 can be found in IRM 25.1.3.3, Preparation of Form 2797 - Referral Report of Potential Criminal Fraud Cases.

4.23.12.11
(12-16-2008)

**Referral to Tax Exempt
and Government Entities**

- (1) If a responsible officer of a TE/GE organization refuses to file a required return, the employee should prepare Form 5666, TE/GE Referral Information Report, or Form 5346. After managerial approval, the Form 5666 or Form 5346 should be forwarded to TE/GE for necessary action.

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Exhibit 4.23.12-1 (06-14-2021)

Delinquent Return Campus Mailing Addresses

If Return is filed in:	Then Mail to:
Alabama, Alaska, Arizona, Arkansas, California, Colorado, Florida, Hawaii, Idaho, Iowa, Kansas, Louisiana, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oklahoma, Oregon, South Dakota, Texas, Utah, Washington, or Wyoming	Department of the Treasury Internal Revenue Service Ogden, UT 84201-0005
Connecticut, Delaware, District of Columbia, Georgia, Illinois, Indiana, Kentucky, Maine, Maryland, Massachusetts, Michigan, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, South Carolina, Tennessee, Vermont, Virginia, West Virginia, or Wisconsin	Department of the Treasury Internal Revenue Service Kansas City, MO 64999-0005

