



# MANUAL TRANSMITTAL

Department of the Treasury  
Internal Revenue Service

4.23.13

AUGUST 5, 2020

## EFFECTIVE DATE

(08-05-2020)

## PURPOSE

- (1) This transmits revised IRM 4.23.13, Employment Tax - Adjusted Returns, Abatements and Claims.

## MATERIAL CHANGES

- (1) IRM 4.23.13.1. New subsection, Program Scope and Objectives. Rearranged existing IRM content to place information involving internal controls for a program IRM under this subsection to conform to the new rules to ensure that the program's internal controls are adequately expressed in the IRM.
- (2) IRM 4.23.13.1.1. New subsection, Background.
- (3) IRM 4.23.13.1.2. New subsection, Authority.
- (4) IRM 4.23.13.1.3. New subsection, Responsibilities.
- (5) IRM 4.23.13.1.4. New subsection, Program Objectives and Review.
- (6) IRM 4.23.13.1.5. New subsection, Acronyms. A list of frequently used abbreviations and their definitions.
- (7) IRM 4.23.13.1.6. New subsection, Related Resources. A list of related resources. Includes former IRM 4.23.10.3, *Disclosure*.
- (8) IRM 4.23.13.2.1. Renamed, Pre-Contact Analysis: Requirements for Refunding Employer and Employee FICA and FITW. Moved Overview: Centralized Classification to IRM 4.23.13.1.1, Background.
- (9) IRM 4.23.13.2.2(5). Clarified use of the "AA" statute for netted adjustments.
- (10) IRM 4.23.13.2.3. (2) and (3). Revised the definition of claim and abatement/audit reconsideration.
- (11) IRM 4.23.13.3.2.1. Disposal code changed to "04", if agreed.
- (12) IRM 4.23.13.4(2). Changed NDWC to Letter 3523, *Notice of Employment Tax Determination Under IRC Section 7436*.
- (13) IRM 4.23.13.4.1(3). Clarified the attachments to be included.
- (14) IRM 4.23.13.4.1.1. Disposal code changed to "01", if agreed.
- (15) IRM 4.23.13.4.1.2. Disposal code changed to "01", if agreed.
- (16) IRM 4.23.13.4.1.3. Disposal code changed to "04", if agreed.
- (17) IRM 4.23.13.4.3.2. Added (5) for claims allowed in full with additional audit adjustments.
- (18) IRM 4.23.13.4.4. Added information on Form 3363 in (5) and new (6) and (7).
- (19) IRM 4.23.13.5(2). Updated info for website of the AARS team webpage from the Appeals Intranet Home Page.

- (20) IRM 4.23.13.7. Changed “cannot” to “should not” in this sentence. Returns with the “Adjusted employment tax return” box checked should not result in a refund being issued to the taxpayer.
- (21) IRM 4.23.13.7.4. Change of address for ET-WSD.
- (22) IRM 4.23.13.8(5). Revised to include delegation authority for signing Form 907; IRM 1.2.65.3.8.
- (23) IRM 4.23.13.9. (2) Deleted “In rare exceptions” for Collection due process.
- (24) Exhibit 4.23.13-1. Added definition of affirmative issue.
- (25) Exhibit 4.23.13-3. Answer 2: Changed due date to last day of January of the following year.
- (26) Editorial, typographical, and technical changes have been made throughout this section.

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

This material supersedes IRM 4.23.13, dated January 8, 2016.

#### **AUDIENCE**

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

Wanda R. Griffin  
Director, Specialty Examination Policy  
Small Business/ Self-Employed Division

4.23.13

Adjusted Returns, Abatements and Claims

## Table of Contents

4.23.13.1 Program Scope and Objectives

4.23.13.1.1 Background

4.23.13.1.2 Authority

4.23.13.1.3 Responsibilities

4.23.13.1.4 Program Objectives and Review

4.23.13.1.5 Acronyms

4.23.13.1.6 Related Resources

4.23.13.2 Pre-Contact Analysis of Form 94x-X: Overview

4.23.13.2.1 Pre-Contact Analysis: Requirements for Refunding Employer and Employee FICA and FITW

4.23.13.2.2 Pre-Contact Analysis: Statute of Limitation Considerations

4.23.13.2.3 Revenue Base Protection

4.23.13.3 Examining Claims for Refund

4.23.13.3.1 Full Disallowance of Claim for Refund

4.23.13.3.1.1 Full Disallowance of Claim for Refund without Audit Development

4.23.13.3.1.2 Full Disallowance With No Additional Audit Adjustments

4.23.13.3.1.3 Full Disallowance With Additional Audit Adjustments

4.23.13.3.2 Partial Disallowance of Claim for Refund

4.23.13.3.2.1 Partial Disallowance of Claim for Refund - No Audit Adjustments

4.23.13.3.2.2 Partial Disallowance of Claim for Refund - Audit Adjustments

4.23.13.3.3 Full Allowance of Claim for Refund

4.23.13.3.3.1 Full Allowance of Claim for Refund - Survey

4.23.13.3.3.2 Full Allowance of Claim for Refund - Examined

4.23.13.3.4 Form 2297 and Form 3363

4.23.13.3.5 Form 4666

4.23.13.4 Audit Reconsideration And Requests for Abatement

4.23.13.4.1 Examining the Issues - Audit Reconsiderations and Requests for Abatement

4.23.13.4.1.1 Full Allowance (Full Abatement of Assessment) Audit Reconsideration Only

4.23.13.4.1.2 Full Disallowance (No Abatement) Audit Reconsideration Only

4.23.13.4.1.3 Partial Disallowance (Partial Abatement) Audit Reconsideration Only

4.23.13.4.1.4 Request for Abatement, All Closures

4.23.13.4.2 Audit Reconsideration - Appeals

4.23.13.4.3 IRC 3402(d) and IRC 3102(f)(3)

4.23.13.5 Claims Received or Cases Previously Considered by Appeals

4.23.13.6 Request for Reconsideration of Disallowed Employment Tax Claims

4.23.13.7 Adjusted Returns

- 
- 4.23.13.8 Form 907 - Agreement to Extend the Time to Bring Suit
  - 4.23.13.9 Appeals to the Federal Courts
  - 4.23.13.10 Repayments, Reimbursements and Employee Consents

Exhibits

- 4.23.13-1 Form 5344
- 4.23.13-2 Instructions for Completion of Form 3870 by the Examiner
- 4.23.13-3 FAQs on Form 941-X Claims

4.23.13.1  
(08-05-2020)  
**Program Scope and Objectives**

- (1) **Purpose:** This section provides guidelines on employment tax adjusted returns, abatements and claims.
- (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 adjusted returns, abatements, and claims.
- (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)
  - Examination - Specialty Policy, Employment Tax Policy (SE:S:D-CE:E:HQ:SP:ETP)
  - Tax Exempt/Governmental Entities (TE/GE)
  - Federal, State & Local/ *Employment* Tax Area, EO Examination (FSL/ET)
  - Large Business and International (LB&I)

4.23.13.1.1  
(08-05-2020)  
**Background**

- (1) The examiner must determine what type of request the taxpayer has made to properly examine, close, and process the case. The following are the types of requests addressed in this IRM:
  - Claim for Refund: Request for a refund or credit of tax for which there is a purported overpayment.
  - Request for Abatement: Request for an abatement of tax that has been assessed but not paid.
  - Audit Reconsideration Request: Claim for refund or request for abatement of assessment made due to an examination. An audit reconsideration may be a request for abatement, but not all requests for abatement are audit reconsiderations.
  - Adjusted Return: Request for a correction to a 94x return that was previously filed (increase or decrease). However, no refund of taxes is requested.

**Note:** The “x” denotes the last digit of the employment tax form, and could refer to Form 941, Form 943, Form 944 or Form 945.
- (2) “X” forms must be used for adjusted returns, claims for refund, requests for abatement and audit reconsideration requests. These forms correspond and relate line-by-line to the employment tax return they are correcting and to the tax period in which the error actually occurred. The “X” forms affect:
  - 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
  - Form CT-1, Employer’s Annual Railroad Retirement Tax Return.

**Note:** All references to Form 94x-X include Form CT-1X.

- (3) Classification of most Forms 94x-X for examination is conducted at the Campus. However, in the course of conducting an open examination, an examiner may receive a Form 94x-X from the taxpayer.
- (4) Forms 94x-X allow the taxpayer to file either an “adjusted employment tax return” (box 1) or “claim” (box 2). While the taxpayer’s selection between the two blocks does not affect how the case is worked by the examiner, it does affect the final processing of the case. Returns with the “adjusted employment tax return” block marked generally will not result in a refund issued to the taxpayer. Any credit balance resulting from the exam or processing of the return MUST be moved to the period in which the “X” adjusted return was filed. Any credit balance transfer will be completed using a Form 3870, Request for Adjustment, when preparing the examination closing documents.
- (5) Taxpayers will use Form 843, Claim For Refund and Request for Abatement, for requesting abatement of assessed penalties and interest.
- (6) There is no “X” form for the Form 940, Employer’s Annual Federal Unemployment (FUTA) Tax Return. Taxpayers will use a Form 940 for amending previously filed returns.

**Example:** The employer will use the 2015 Form 940 (marking the amended return box) to amend a return that the employer previously filed for 2015.

4.23.13.1.2  
(08-05-2020)  
**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, Policies of the Internal Revenue Service 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/uac/delegation-orders-by-process1> 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.

4.23.13.1.3  
(08-05-2020)  
**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.

4.23.13.1.4  
(08-05-2020)  
**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 1.1.16.3.3.3, 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.

4.23.13.1.5  
(08-05-2020)  
**Acronyms**

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

Acronym	Definition
AARS	Appeals Account Resolution
ACDS	Appeals Centralized Database System
ACM	Appeals Case Memo
AdMT	Additional Medicare Tax
BMF	Business Master File
CAR	Case Activity Record
CCP	Centralized Case Processing
DC	Disposal Code
EO	Exempt Organization
FICA	Federal Insurance Contributions Act
FITW	Federal Income Tax Withholding
FTD	Failure to Deposit
FUTA	Federal Unemployment Tax Act
IMS	Issue Management System
LB&I	Large Business & International
MFT	Master File Tax
RBP	Revenue Base Protection
RSED	Refund Statute Expiration Date

Acronym	Definition
SAA	Survey After Assignment
SBA	Survey Before Assignment
SB/SE	Small Business/Self-Employed
SFR	Substitute for Return
TBOR	Taxpayer Bill of Rights
TC	Transaction Code
TE/GE	Tax Exempt/Government Entities

4.23.13.1.6  
(08-05-2020)

#### 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 owned by SB/SE Examination - Specialty 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 4.10.11	Examination of Returns, Claims for Refund and Requests for Abatement	This IRM provides general technical and procedural guidance for examinations and report writing specific to claims for refund and requests for abatement (that are not audit reconsiderations).



Source	Title	Description of Guidance
IRM 25.21.4	Affordable Care Act - IRC 6056 Non-Filer and IRC 4980H Compliance Process	IRM section owned by SB/SE Examination - Specialty Policy. This section contains instructions and guidelines for all Small Business/Self Employed (SB/SE) employees dealing with IRC 6056 and IRC 4980H.

(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, 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 (TBOR) in June 2014. Employees are responsible for being familiar with and acting in accordance with taxpayer rights. See IRC 7803(a)(3). For additional information about the TBOR, see <https://www.irs.gov/taxpayer-bill-of-rights>.

4.23.13.2  
(08-05-2020)

#### **Pre-Contact Analysis of Form 94x-X: Overview**

(1) To determine the type of taxpayer request as described in IRM 4.23.13.1.1(1), request a current transcript of the module(s) indicated on the Form 94x-X:

- If the request involves an abatement of a previous examination assessment that does not allege any overpayment, treat the request as an Audit Reconsideration. If the case has been closed, the examiner may request the original case file.
- If the request involves an abatement of tax that was not made as part of an examination (no TC30X or TC29X on module) and does not allege any overpayment, treat the request as a request for abatement.
- If the claim alleges an overpayment of a liability, regardless of how the liability was assessed, the Form 94x-X will be treated as an adjusted return or claim for refund.

**Note:** Then Form 94x-X could be a claim for refund or an adjusted return even if not in zero balance.

4.23.13.2.1  
(08-05-2020)

**Pre-Contact Analysis:  
Requirements for  
Refunding Employer and  
Employee FICA and  
FITW**

- (1) Generally, the employer has a duty to first “adjust” the employee portion of Federal Insurance Contributions Act (FICA) taxes as a condition of receiving a refund for the employer and employee portions of FICA. See *Atlantic Department Stores, Inc. v. United States*, 557 F.2d 957 (2d Cir. 1977). See also Rev. Proc. 81-69, 1981-2 C.B. 726 and Rev. Rul. 81-310, 1981-2 C.B. 241.
- (2) An employer may receive a refund of the employee portion of social security and Medicare taxes collected in a year prior to the year in which the refund claim is made only if the taxpayer obtains employee consents or repays/reimburses the employee. Examiners must:
  - a. Review Form 94x-X, Part 1, to determine whether the employer wants to correct a previously filed Form 941 using the adjustment process (box 1) or the claim process (box 2). Only one box may be checked.
  - b. If the Form 94x-X is an adjusted return, review checkboxes 4a, b, and c to determine whether written statements are required. If required, the examiner will ask for enough copies from the taxpayer to ensure compliance.
  - c. If the Form 94x-X is for a claim for refund or claim for abatement, review checkboxes 5a, b, c, and d to determine whether consents or written statements are required. If required, the examiner will ask for enough copies from the taxpayer to ensure compliance.
  - d. Verify with the employer whether they have already filed Forms W-2 and/or Forms W-2c.

Employer filing W-2/W-2c	
If the employer	Then
Filed Forms W-2/ W-2c	Document the filing date in the workpapers
Has not already filed Forms W-2c	Tell the employer that they must be filed by the last day of January of the following year.
Filed the original Forms W-2 correctly	No Forms W-2c are needed. Document this in the workpapers.

- (3) An employer may correct Federal Income Tax Withholding (FITW) and Additional Medicare Tax (AdMT) withholding errors discovered during the same calendar year in which the employer paid wages. An employer cannot correct amounts reported in a prior calendar year unless it is to correct an administrative error or IRC 3509 applies. If the employer has overpaid FITW or AdMT, the employer cannot file a claim for refund for the amount of the overpayment unless the amount was not actually withheld from the employee’s wages (which would be an administrative error). If a prior year error was a non-administrative error, the employer may correct only the wages and tips subject to FITW or AdMT withholding.

**Note:** Only transposition or math errors involving the inaccurate reporting of the amount withheld are “administrative errors”.

- (4) An employee can claim a refund of any FITW or AdMT that the employer over-withheld on Form 1040 (or Form 1040X, if the employee already filed Form 1040).

**Note:** See IRM 4.23.13.10, *Repayments, Reimbursements and Employee Consents*, for additional information on procedural requirements for an employer to receive a refund of the employer and employee portions of FICA tax and any FITW.

4.23.13.2.2  
(08-05-2020)  
**Pre-Contact Analysis:  
Statute of Limitation  
Considerations**

- (1) Generally, Forms 94x-X must be filed by the taxpayer within three years from the time the original return was filed or two years from the time the tax was paid, whichever period expires later. These requests do not extend the statute of limitations.

**Note:** If it is a request to abate, there is no time period in which the claim must be filed. The taxpayer is always free to make a payment and then, within two years, to file a claim for refund for the return of such payment.

- (2) If the Form 94x-X is not timely filed, see IRM 4.23.13.3.1.1, Full Disallowance of Claim for Refund without Audit Development. In computing the period of limitations, IRC 6513(c) provides that employment tax returns reporting FICA tax or federal income tax withholding (FITW) for any period ending with or within a calendar year filed before April 15 of the succeeding calendar year are deemed filed on April 15 of such succeeding calendar year.
- (3) If Form 941x-X was not filed within the three-year period, the amount of the credit or refund shall not exceed the portion of the tax paid during the two years immediately preceding the filing of the claim. See IRC 6511(b)(2)(B).
- (4) Forms 94x-X follow the same statute date for assessments as the original filed 94X return. Examiners must check the transcript for the original date of filing, and if warranted, take steps to protect the statute date for assessment.
- (5) If protecting the statute, use normal audit statute procedures to secure Form SS-10, Consent to Extend the Time to Assess Employment Taxes. See IRM 4.23.14, Statute Control and Extension. If not protecting the statute for assessment, written approval must be obtained from the group manager and kept in the case file.
- (6) Alpha Statute "AA" must only be used when:
- The taxpayer does not sign Form SS-10,
  - There are less than 180 days remaining on the statute, and
  - The examiner has determined there are no other issues warranting examination and the examiner is not taking steps to protect the statute date of assessment.

**Note:** If a taxpayer files a claim with netted (offsetting) amounts, the statute date should not reflect "AA".

**Reminder:** Inspect the amended return for adjustments which result in tax increases, which warrant protecting the statute of limitations. For these situations, the "AA" statute would not be used.

- (7) Alpha Statute "AA" may **NOT** be used when the Form 94x-X claim has been allowed by the Campus (whether payment, additional assessment, or transfer of credit balance).
- (8) Appeals will not accept cases (including reference returns where the period for assessment should be protected) unless there is at least 365 days on the statute of limitations for assessment when the case is received in Appeals.

**Note:** For purposes of Employment Tax case processing, examiners must be aware of the 365-day requirement and plan accordingly when issuing a Letter 5376, Full or Partial Claim Disallowance Letter-Employment Tax. (Allow 30 days when determining response due date to be inserted on Letter 5376). Examiners must plan for 30 days to allow for shipping and processing a case through Technical Services before being sent to Appeals. Therefore, this requires at least 395 days remaining on the statute when closed from the group, (IRM 4.10.8.11.1, 30-Day Letters) and 425 days (365+30+30) on the statute when issuing the Letter 5376. Examiners must also account for time needed to review the protest, prepare any rebuttal, and close the case from the group.

4.23.13.2.3  
(08-05-2020)  
**Revenue Base  
Protection**

- (1) Examinations frequently involve claims for refund or adjusted returns where the examiner attempts to prevent the erroneous refund of money to a taxpayer or transfer of credit. It is important to capture examiner time spent on claim activities and similar revenue protection situations on the case activity record, Issue Management System (IMS), and Form 5344, *Examination Closing Record*. This examination activity is "Revenue Base Protection" (RBP).
- (2) The definition of "claim" is a request made by taxpayer that alleges an over-assessment, an overpayment, or both. A claim that alleges an overpayment is a claim for refund, whether or not the taxpayer also alleges an overassessment. A claim that alleges an overassessment and that does not allege any overpayment, e.g., in an underpayment situation, is a claim for abatement. These definitions apply regardless of whether the assessment was made from a filed return or as a result of an examination. Examiners use Source Code "30" for claim for refund or an adjusted return where some amount of the tax previously assessed and paid would be refunded to the taxpayer or the credit would be transferred to the period in which the "X" adjusted return was filed. These returns require RBP procedures.
- (3) If the assessed liability was not paid in full and the taxpayer does not allege an overpayment, then the claim would be a claim for abatement or an audit reconsideration case. RBP procedures do not apply in these situations. Examiners use Source Code "73" for claims for abatement and audit reconsiderations. RBP Procedures also do not apply if the amounts reflected on the Form 94x-X have already been paid to the taxpayer, since there is no longer a claim.
- (4) When a Form 94x-X is received during an in-process examination and is for the same tax period that is already open, it is up to the examiner to determine if the issues on the Form 94x-X are significant in comparison to the other audit issues being addressed, because the proper allocation of time spent on the case must be allocated between RBP and non-RRB time. IRM 4.4.12.5.34, *Revenue Base Protection Section (Claim for Refund Disallowed)*, provides further clarification when making the determination on whether the Form 94x-X should be considered as RBP.

4.23.13.3  
(01-08-2016)  
**Examining Claims for Refund**

- (1) There are three possible results when a claim is examined. The claim may be:
- Disallowed in full, with or without adjustments,
  - Partially allowed, with or without adjustments, or
  - Allowed in full, with or without adjustments.

4.23.13.3.1  
(01-08-2016)  
**Full Disallowance of Claim for Refund**

- (1) When the Form 94x-X claim for refund is timely filed and has merit, the examiner will develop the issues just as in any other examination. If the examiner determines the issues on the claim should be fully disallowed, see IRM 4.23.13.3.1.2, Full Disallowance With No Additional Audit Adjustments, and IRM 4.23.13.3.1.3, Full Disallowance With Additional Audit Adjustments, for forms and letters that need to be prepared.

4.23.13.3.1.1  
(01-08-2016)  
**Full Disallowance of Claim for Refund without Audit Development**

- (1) In certain situations, the examiner will dispose of the claim for refund without performing any audit actions, if one of the following criteria is met. The claim:
- a. Is not timely filed,
  - b. Is based solely on alleged unconstitutionality of revenue acts, moral, religious, political, conscientious, or similar grounds,
  - c. Is based on a return stamped "Waiver of Refund" or there is other evidence in the case file indicating that a refund was waived as a consideration in a settlement by the Department of Justice, the Chief Counsel's Office, etc.,
  - d. Relates to a return closed on the basis of a final court order, unless a refund may nevertheless be allowed under specific provisions of the Code,
  - e. Covers a taxable period in which the tax liability or specific issues were the subject of a final closing agreement under IRC 7121 or in which the tax liability was compromised under IRC 7122 except in the following situations:
    - Statutory exceptions to finality of closing agreements, and
    - Claims based on issues not included in prior specific matter closing agreements.
  - f. Is the subject of a request for withdrawal by the claimant,
  - g. Requests the examiner to reconsider issues previously considered by Appeals, or
  - h. Requests examiner to reconsider a previously disallowed claim, if no additional facts are submitted.
- (2) The examiner will inform the taxpayer that the issues have already been considered and will not be considered if the Form 94x-X:
- Is based solely on an issue considered in previously examined returns of the claimant who requests in writing the immediate issuance of a statutory notice of claim disallowance, or
  - Raises the same issues that were previously considered in the closing of the case.
- (3) See IRM 4.23.13.3.1.2, Full Disallowance With No Additional Audit Adjustments, and IRM 4.23.13.3.1.3, Full Disallowance With Additional Audit Adjustments, for forms and letters that need to be prepared.

4.23.13.3.1.2  
(01-08-2016)

**Full Disallowance With  
No Additional Audit  
Adjustments**

- (1) Cases containing claims for refund that are disallowed in full, **with no additional audit adjustments** (Disposal Code "01"), may include:
- Form 886-A, Explanation of Items (for unagreed cases, optional for others),
  - Form 2297, Waiver of Statutory Notice of Claim Disallowance,
  - Form 3363, Acceptance of Proposed Disallowance of Claim for Refund or Credit,
  - Form 4666, Summary of Employment Tax Examination, (see IRM 4.23.13.3.5)
  - Form 4667, Examination Changes - Federal Unemployment Tax (if applicable),
  - Form 4668, Employment Tax Examination Changes Report,
  - Letter 5376, Full or Partial Claim Disallowance Letter - Employment Tax,
  - Pub 5, Your Appeal Rights and How to Prepare a Protest if You Don't Agree, and
  - Pub 594, The IRS Collection Process.

4.23.13.3.1.3  
(01-08-2016)

**Full Disallowance With  
Additional Audit  
Adjustments**

- (1) Cases containing claims for refund that are disallowed in full, **with additional audit adjustments resulting in an increase in employment tax liabilities** (Disposal Code "03" if agreed, Disposal Code "07" if appealed, and Disposal Code "08" if unagreed without an appeal request), may include:
- Form 886-A (for unagreed cases, optional for others),
  - Form 2297,
  - Form 3363,
  - Form 4666, (see IRM 4.23.13.3.5)
  - Form 4667 (if applicable),
  - Form 4668,
  - Form 2504, appropriate version,
  - Letter 5376,
  - Pub 5, and
  - Pub 594.

4.23.13.3.2  
(01-08-2016)

**Partial Disallowance of  
Claim for Refund**

- (1) Cases containing claims for refund that are disallowed in part are processed in two different ways:
- No additional audit adjustments
  - Additional audit adjustments resulting in an increase in employment tax liabilities

4.23.13.3.2.1  
(08-05-2020)

**Partial Disallowance of  
Claim for Refund - No  
Audit Adjustments**

- (1) Cases containing claims for refund that are disallowed in part, **with no additional audit adjustments**, will be closed with Disposal Code "04" if agreed, Disposal Code "07" if appealed, or Disposal Code "08" if unagreed without an appeal request. Case files may include:
- Form 886-A (for unagreed cases, optional for others),
  - Form 2297,
  - Form 3363,
  - Form 4666, (see IRM 4.23.13.3.5)
  - Form 4667 (if applicable),
  - Form 4668,
  - Letter 5376,



- Pub 5, and
- Pub 594.

4.23.13.3.2.2  
(01-08-2016)

**Partial Disallowance of Claim for Refund - Audit Adjustments**

- (1) Cases containing claims for refund that are disallowed in part, **with additional audit adjustments resulting in an increase in employment tax liabilities**, will be closed with Disposal Code "03" if agreed, Disposal Code "07" if appealed, or Disposal Code "08" if unagreed without an appeal request. Case files may include:

- Form 886-A (for unagreed cases, optional for others),
- Form 2297,
- Form 3363,
- Form 4666, (see IRM 4.23.13.3.5)
- Form 4667 (if applicable),
- Form 4668,
- Form 2504, appropriate version,
- Letter 5376,
- Pub 5, and
- Pub 594.

4.23.13.3.3  
(01-08-2016)

**Full Allowance of Claim for Refund**

- (1) Full allowance of a claim for refund may be:

- Surveyed after assignment (Disposal Code "34"), or
- Examined (Disposal Code "03").

4.23.13.3.3.1  
(01-08-2016)

**Full Allowance of Claim for Refund - Survey**

- (1) Claims for refund may be surveyed after assignment if it is determined that the **claim issue is clearly allowable in full** and the return does not otherwise warrant examination.

- Examiners will prepare Form 2503, Survey – Excise or Employment Tax, to briefly explain why the claim is being surveyed.
- Claims must be stamped "Survey after Assignment" and signed/dated by both the examiner and the group manager.
- On Form 3198, Special Handling Notice for Examination Case Processing, examiners must check the "Surveyed Claim" box in the "Special Features" section. Under "Letter Instructions for CCP", check the boxes "Claim Letters" and "Fully Allowed - L570."
- Additionally, examiners must prepare Letter 570, Claim Allowed in Full, and leave in case file to be mailed by Centralized Case Processing (CCP).
- The examiner must prepare Form 5344 for cases closed "Survey after Assignment". See Exhibit 4.23.13-1, Form 5344. For TE/GE examiners, use Form 5599, TE/GE Examined Closing Record.

**Note:** If necessary, the examiner should inform the taxpayer to submit a Schedule B (Form 941), Report of Tax Liability for Semiweekly Schedule Depositors, (or Form 943-A, Agricultural Employer's Record of Federal Tax Liability, or Form 945-A, Annual Record of Federal Tax Liability, as appropriate), so the Failure to Deposit (FTD) penalty can be recomputed at the Campus if the tax is decreased.

4.23.13.3.3.2  
(08-05-2020)

**Full Allowance of Claim  
for Refund - Examined**

- (1) When the Form 94x-X, claim for refund, is timely filed and has merit, the examiner will develop the issues just as in any other examination. Case files containing claims for refund that are allowed in full, **with no additional audit adjustments**, will include:
  - Form 4666 (see IRM 4.23.13.3.5),
  - Form 4667 (if applicable), and
  - Form 4668.
- (2) On Form 3198 under "Letter Instructions for CCP", check the boxes "Claim Letters" and "Fully Allowed - L570."
- (3) Examiners must prepare Letter 570, Claim Allowed in Full, and leave in case file to be mailed by CCP.
- (4) The examiner must prepare Form 5344 for cases closed with no additional audit adjustments. See Exhibit 4.23.13-1, *Form 5344*. For TE/GE examiners, use Form 5599, TE/GE Examined Closing Record.
- (5) For claims allowed in full, **with additional audit adjustments** which reduce the amount refundable, the claim will be treated as a partially or wholly disallowed claim. The procedures for claims disallowed in full or in part will be followed.

4.23.13.3.4  
(08-05-2020)

**Form 2297 and Form  
3363**

- (1) Form 2297, Waiver of Statutory Notice of Claim Disallowance, is used when claims for refund or adjusted returns are disallowed in part or whole. Securing this waiver means the IRS is not required to issue a Statutory Notice of Claim Disallowance (Letter 905, Final Partial Claim Disallowance Letter, or Letter 906, Final Full Claim Disallowance Letter). A signed Form 2297 starts the two-year period for the taxpayer to file suit as allowed in IRC 6532.
- (2) Form 2297 is not applicable for unagreed, fully or partially disallowed requests for abatement, or audit reconsiderations.
- (3) If the Form 2297 is not secured when a claim for refund is proposed for disallowance in whole or in part, and no appeals request was received, a statutory notice of claim disallowance, Letter 905 or 906, is issued by Technical Service after all other administrative action has been concluded.
- (4) Examiners will indicate this on the Form 3198 under "Forward to Technical Services" by checking the box: "Statutory Notice of Claim disallowance – Letters 905 and 906."
- (5) Form 3363, Acceptance of Proposed Disallowance of Claim for Refund or Credit, is requested at the same time as Form 2297. Form 3363 is to be used in "agreed cases" when claims for refund or adjusted returns are disallowed in full or part and no other adjustments to the tax liability are necessary. By signing Form 3363, the taxpayer accepts the proposal of the IRS to disallow the claim(s) in full or in part.
- (6) In an agreed case where the claim is being disallowed in full or part **with additional adjustments** to the tax liability, both Form 3363 and an examination report should be secured to indicate agreement. See IRM 4.23.13.3.1.3, Full Disallowance With Additional Audit Adjustments, and IRM 4.23.13.3.2.2, Partial Disallowance of Claim for Refund - Audit Adjustments. Also see IRM



4.23.13.3.5, Form 4666, for information to be included in the remarks section of the report.

- (7) Form 3363 does not waive the taxpayer's right to file suit on the disallowance.

4.23.13.3.5  
(01-08-2016)  
**Form 4666**

- (1) Form 4666, Summary of Employment Tax Examination, must be completed for all examined Form 94x-X claim for refund cases.
- (2) The Form 4666 will include this statement (Form 941-X used as example):

"On (date stamped on 941-X) you filed claim Form 941-X, Adjusted Employer's QUARTERLY Federal Tax Return or Claim for Refund, or an informal claim for a refund of \$\_\_\_\_\_ for (period/year)."

In addition, one of the following statements will be included:

- a. As a result of our examination, we allowed your claim in full, as shown in the attached report.
  - b. As a result of our examination, we allowed your claim in full. The total amount of the refund has been increased or decreased by other adjustments, as shown in the attached report.
  - c. As a result of our examination, we allowed your claim in part, as shown in the attached report.
  - d. As a result of our examination, your claim was disallowed in full.
- (3) If the claim did not involve the identification or development of a worker classification issue, the following statement must also be included on Form 4666: "The examination of your employment tax claim as reflected on this report did not include an examination for employment tax purposes of whether any individuals should be treated as employees of the taxpayer."

4.23.13.4  
(08-05-2020)  
**Audit Reconsideration  
And Requests for  
Abatement**

- (1) Requests for abatement of assessment can be an audit reconsideration (if based on a previous TC30X or TC29X assessment) or a simple request to abate unpaid tax. The only difference in how requests for abatement are processed is the letters used in the closing process.
- (2) To meet audit reconsideration criteria, the taxpayer must:
- a. State they did not receive the initial appointment letter, 30-Day Letter with the report, or Letter 3523, Notice of Employment Tax Determination Under IRC Section 7436, or
  - b. State they have new information that, if considered, would change the original assessment, or
  - c. Show the assessment was made as a jeopardy assessment. (See Policy Statement 4-88 at IRM 1.2.13.1.27.)

**Reminder:** Additional information on Audit Reconsiderations can be found in IRM 4.13.4, Audit Reconsideration - Area Office Examination.

- (3) Both audit reconsiderations and requests for abatements require the use of the appropriate employment tax report forms by the examiner (appropriate Form 2504, Form 4666, Form 4668, Form 4667).

**Note:** Form 3363 and Form 2297 are not used.

4.23.13.4.1  
(01-08-2016)

**Examining the Issues -  
Audit Reconsiderations  
and Requests for  
Abatement**

- (1) Audit reconsiderations and requests for abatement are administrative procedures available to the taxpayer by the Internal Revenue Service in order to reduce taxpayer burden. The IRS does not want to require the taxpayer to pay the assessment and file a claim if there is additional information to be considered.
- (2) The purpose of the audit reconsideration or request for abatement process is to examine information that was not previously considered:
  - a. If the taxpayer presents new information that was not previously considered, evaluate that information and determine if a change to the assessment is warranted. Document workpapers and the activity record. If a change to the assessment is warranted, make that change.
  - b. If the taxpayer cannot or does not present new information in support of their position, do not abate any tax.

4.23.13.4.1.1  
(08-05-2020)

**Full Allowance (Full  
Abatement of  
Assessment) Audit  
Reconsideration Only**

- (1) After receipt and evaluation of the taxpayer's information and a full abatement is allowable, the examiner will issue:
  - Letter 2738, Audit Reconsideration - Complete Abatement,
  - Form 2504, appropriate version,
  - Form 4666, Summary of Employment Tax Examination, (see IRM 4.23.13.3.5),
  - Form 4667, Examination Changes - Federal Unemployment Tax, if applicable, and
  - Form 4668, Employment Tax Examination Changes Report, if applicable, reflecting the full abatement of tax.
- (2) The case will be closed with the Disposal Code "01", (whether or not the taxpayer signs the report).

4.23.13.4.1.2  
(08-05-2020)

**Full Disallowance (No  
Abatement) Audit  
Reconsideration Only**

- (1) After receipt and evaluation of the taxpayer's information and it is determined that no abatement is allowable, the examiner will issue:
  - Letter 5182, Audit Reconsideration-No Changes to Original Assessment,
  - Form 886-A, Explanation Of Items,
  - Pub 5, Your Appeal Rights and How to Prepare a Protest if You Don't Agree,
  - Pub 594, The IRS Collection Process.
- (2) The case will be closed with the Disposal Code "01," unless the taxpayer provides an appeal request; if appealed, the Disposal Code is "07".

4.23.13.4.1.3  
(08-05-2020)

**Partial Disallowance  
(Partial Abatement)  
Audit Reconsideration  
Only**

- (1) After receipt and evaluation of the taxpayer's information and it is determined that only part of the abatement is allowable, the examiner will issue:
  - Letter 5183, Audit Reconsideration - Change to Original Assessment,
  - Form 2504, appropriate version,
  - Form 4666, (see IRM 4.23.13.3.5),
  - Form 4667 (if applicable),
  - Form 4668 (if applicable),
  - Form 886-A
  - Pub 594, The IRS Collection Process, and
  - Pub 5.

(2) The case will be closed:

- Disposal Code "04", if agreed,
- Disposal Code "07", if appealed, or
- Disposal Code "08," if the taxpayer does not respond.

**Note:** If the tax is decreased and the account previously had a FTD penalty, the examiner should inform the taxpayer to submit a new Schedule B (Form 941), Report of Tax Liability for Semiweekly Schedule Depositors, (or Form 943-A, Agricultural Employer's Record of Federal Tax Liability, or Form 945-A, Annual Record of Federal Tax Liability, as appropriate), so the Failure to Deposit (FTD) penalty can be recomputed at the Campus if the tax is decreased and the account previously had an FTD penalty.

4.23.13.4.1.4  
(01-08-2016)

**Request for Abatement,  
All Closures**

(1) For all requests for abatement (allowed in full, allowed in part or disallowed in full), Letter 5154, Employment Tax Reply to Request for Reconsideration of Assessment, will be used when the report is issued.

4.23.13.4.2  
(01-08-2016)

**Audit Reconsideration -  
Appeals**

(1) Where the taxpayer has responded and provided additional information, consideration by the Appeals Office **will be** afforded if the taxpayer does not agree with the examiner's determination. A 30-Day Letter and report will be issued to the taxpayer to start the Appeal process.

(2) Where the taxpayer has not responded or has not provided additional information, consideration by the Appeals Office **will not be** afforded.

**Note:** Letter 5154, Employment Tax Reply to Request for Reconsideration of Assessment, must be used for all correspondence to the taxpayer when the taxpayer does not respond or provide additional information for an Audit Reconsideration. Letter 5154 is also used when an adjustment was made to the prior assessment for both a Claim for Abatement and Audit Reconsideration. The taxpayer is not afforded consideration by the Appeals Office.

4.23.13.4.3  
(01-08-2016)

**IRC 3402(d) and IRC  
3102(f)(3)**

(1) For information regarding employer's requests under:

- IRC 3402(d) - Relief from payment of income tax withholding: These requests constitute abatement claims and are usually handled at a Campus. However, examiners have discretion to accept the Form 4669, *Statement of Payments Received*, and Form 4670, Request for Relief of Payment of Certain Withholding Taxes, if completed correctly and provided before the examination is closed to reduce and/or abate the appropriate portion of the assessment as part of their examination report. For additional information, see IRM 4.23.8.4, IRC 3402(d) - Relief for Employer When Employees Have Paid Income Tax on Wages.
- IRC 3102(f)(3) - Relief from payment of Additional Medicare Tax withholding: These requests constitute abatement claims and are usually handled at a Campus. However, examiners have discretion to accept the Forms 4669 and 4670 before the examination is closed to reduce and/or abate the appropriate portion of the assessment as part of their examination report. For additional information, see IRM 4.23.8.4.1, IRC 3102(f)(3) - Relief for Employer When Employees Have Paid Additional Medicare Tax on Wages.

4.23.13.5  
(08-05-2020)  
**Claims Received or  
Cases Previously  
Considered by Appeals**

- (1) If a claim is received for a case previously closed by an Appeals Office, and clearly falls within the circumstances described in IRM 4.23.13.3.1.1, Full Disallowance of Claim for Refund without Audit Development, the claim will be processed as a full claim disallowance. All other claims on cases previously closed by Appeals will be processed as provided in (2) and (3) below. If there is a question as to the action to be taken, retrieve the administrative file and review Appeal's closing documents (e.g. Appeals Case Memo (ACM), agreement form, Case Activity Record (CAR), closing letters, etc.). If the case file does not contain the ACM or CAR, contact the Appeals Office which previously considered the case for these missing documents. See IRM 8.7.7.16, Reconsideration of Claims for Liabilities Previously Considered by Appeals, and IRM 4.13.1.8, Non-Acceptance of Request.
- (2) If the Appeals officer closed the case using a Form 2504 agreement and the claim does not relate to an issue considered during the appeals process, the claim may be processed as though Appeals had not previously acted on the case. However, if the claim relates to an issue considered during the Appeals process, retrieve the administrative file and review Appeals' closing documents. If the case file does not contain the ACM or CAR, contact the Appeals Account Resolution (AARS) Team to determine if the missing documents were retained on Appeals Centralized Database System (ACDS). For information on Appeals Customer Service, access the AARS team webpage from the Appeals Intranet Home Page and then select "AARS" at the top of the webpage.

**Note:** AARS site: <http://appeals.web.irs.gov/AARS.htm>

- (3) If the Appeals officer settled and closed the case using Form 2504-AD, Excise or Employment Tax—Offer of Agreement to Assessment and Collection of Additional Tax and Offer of Acceptance of Overassessment, the claim and case file will generally be forwarded directly to Appeals. However, if the claim does not relate to an issue considered during the Appeal process, the claim may be processed as though Appeals had not previously acted on the case.

4.23.13.6  
(01-08-2016)  
**Request for  
Reconsideration of  
Disallowed Employment  
Tax Claims**

- (1) A claim that has been disallowed in whole or in part will be reconsidered upon submission of additional facts by the claimant, provided such facts are received prior to the expiration of the statute of limitations for bringing suit. If the additional facts submitted warrant reopening of the claim, the claim will be reopened and appropriate adjustments will be made.
- (2) The disposition of a request for reconsideration of a disallowed claim will generally require one of the following types of action:
  - a. Denial of the request for reconsideration.
  - b. Allowance of the issue in whole or in part.
  - c. Entering into an agreement to extend the running of the statutory period of limitations under IRC 6532(a)(2).
- (3) There is no provision in the Internal Revenue Code or regulations requiring the issuance of a certified notice of denial or disallowance of a claimant's request for reconsideration. Therefore, requests for reconsideration of disallowed claims made on any "X" form, or made otherwise, (such as in a letter, brief, or affidavit), will not be treated as original claims. Examiners' reports on requests for reconsideration of disallowed claims must not contain any language from which the claimant may infer that a certified notice of the denial or disallowance will be issued.

- (4) Letter 917, Reply to Taxpayers Request for Reconsideration of Claim, (with applicable box checked), will be issued to notify the taxpayer that no action can be taken on a request for reconsidering the claim if the request is based on IRM 4.23.13.3.1.1, Full Disallowance of Claim for Refund without Audit Development.
- (5) When a Letter 917 is issued, a copy will be placed in the case file and the case closed to Centralized Case Processing (CCP) with no changes to the previous determination. This letter is not considered a certified notice of claim disallowance; Letter 905 and Letter 906 are considered statutory notices of disallowance.
- (6) If the request for reconsideration concerns a claim previously considered and disallowed in whole or in part by Appeals, the claim will be associated with the case file and forwarded promptly to Appeals as long as there is at least 6 months on the period of limitations for instituting suit. If the period of limitations for instituting suit on the disallowed claim will expire in less than 6 months, the case will not be referred to Appeals unless that office agrees to accept jurisdiction or a Form 907, Agreement to Extend the Time to Bring Suit, is secured. See IRM 4.23.13.8, Form 907 - Agreement to Extend the Time to Bring Suit.
- (7) When the examiner or group manager is notified that a taxpayer has filed suit for recovery of taxes paid in a case involving an open claim for refund of employment tax, the case file will be expeditiously sent to Technical Services. A Form 3198 or Form 3198-A, TE/GE Special Handling Notice will be attached to the file instructing Technical Services to issue a statutory notice of claim disallowance before sending the case file to Area Counsel and/or the Office of Chief Counsel.

4.23.13.7  
(08-05-2020)  
**Adjusted Returns**

- (1) Forms 94x-X allow the taxpayer to file either:
  - An "Adjusted employment tax return": Box 1, of Part 1, of the Form 94x-X is checked, or
  - A "Claim": Box 2, of Part 1, of the Form 94x-X is checked.

**Reminder:** While the taxpayer's selection between the two blocks does not affect how the case is worked by the examiner, it does affect the final processing of the case.

- (2) Returns with the "Adjusted employment tax return" box checked should not result in a refund being issued to the taxpayer. Any credit balance resulting from the exam or processing of the return **MUST** be moved to the period in which the "X" adjusted return was filed. Any credit balance transferred will be completed by using a Form 3870, *Request for Adjustment*, after the amount of the credit is determined.
- (3) No overpayment adjustment may be made if the overpayment relates to a return period for which the period of limitations on credit or refund under IRC 6511 will expire within 90 days of filing the adjusted return; this is referred to as the "90-day rule". The purpose of the 90-day rule is to give the IRS sufficient time to process the request for an overpayment adjustment. To satisfy the rule, an adjusted return must be filed 90 days before the expiration of the period of limitations on credit or refund under IRC 6511. If an employer files Form 94x-X to correct overreported amounts in the last 90 days of a period of limitations, the employer must use the claim process. If a taxpayer files an

adjusted employment tax return within 90 days of the expiration of the period of limitations on credit or refund (Refund Statute Expiration Date or RSED), the adjusted return must be converted to a claim for refund. See Treas. Reg. 31.6413(a)-2(d)(2), Rev. Rul. 2009-39, 2009-52, I.R.B. 951, and IRM 21.7.2.4.6.5, 90 Day — Claim.

- (4) The following special procedures must be used for all Forms 94x-X examined if the taxpayer checked the “Adjusted employment tax return” box:
  1. Prepare a partial Form 3870 . See Exhibit 4.23.13-2, Instructions for Completion of Form 3870 by the Examiner.
  2. Enter Hold Code “2” in Item 07 on Form 5344, Examination Closing Record, or Form 5599, TE/GE Examined Closing Record.
  3. Enter “Adjusted Return involving a Credit Balance” in the “Other instructions” section of the Form 3198, Special Handling Notice for Examination Case Processing or Form 3198A, TE/GE Special Handling Notice for TE/GE.
  4. Close the case using the appropriate procedures based on case disposition, e.g., Centralized Case Processing (CCP).

**Note:** For SB/SE employment tax cases worked in Area 212, send the Form 3870 to the Employment Tax - Workload Selection and Delivery (ET-WSD) at the following address:

Stop 5702A/Employment Tax  
 7940 Kentucky Dr  
 Florence KY 41042  
 Adjusted Return Form 3870

- (5) For additional instructions on the examination of Form 94x-X, “Adjusted Return,” see:
  - IRM 4.23.13.3.1, Full Disallowance of Claim for Refund
  - IRM 4.23.13.3.2, Partial Disallowance of Claim for Refund
  - IRM 4.23.13.3.3, Full Allowance of Claim for Refund

4.23.13.8  
 (08-05-2020)

**Form 907 - Agreement to  
 Extend the Time to  
 Bring Suit**

- (1) The issuance of a statutory notice of claim disallowance, or the receipt of the Form 2297 , starts the two-year period in which the taxpayer can file suit in court for payment of the denied requested refund. IRC 6532 allows for the two-year period.
- (2) Under IRC 6532(a)(2), the period of limitations for filing suit on a disallowed claim may be extended. Carefully consider the need to extend the time for filing suit. The following are examples of satisfactory reasons for extending the time for filing suit under IRC 6532:
  - a. If the disposition of a request for reconsideration of a disallowed claim is contingent on a pending court decision, the taxpayer should be given the opportunity of submitting a properly executed Form 907, Agreement to Extend the Time to Bring Suit.
  - b. The Service had under consideration a change in position requiring the suspension of action in all similar cases.
  - c. When an extension will prevent possible inequities to taxpayers.
- (3) The taxpayer and the Service may extend the time for filing suit by executing Form 907 as long as the parties execute the form before the two-year statute



of limitations period for filing a suit in court expires. The requested new expiration date should not be a date more than two years from the expiration of the statute.

- (4) Successive Forms 907 may be executed by the Service and the taxpayer to extend the period to file a refund suit, as long as each extension is executed before the period previously agreed upon has expired.
- (5) Two original Forms 907 must be signed by:
  - The taxpayer or an attorney, agent, trustee, or other fiduciary acting on the taxpayer's behalf pursuant to Form 2848, Power of Attorney, and
  - The Internal Revenue Service. See IRM 1.2.65.3.8 , SBSE 1-23-24, Authority to Sign Agreements to Extend the Running of the Period of Time to Bring Suit for signature authority and delegation, for information on the delegation of signing authority.

**Note:** Rev. Rul. 76-60 requires the inclusion of special language on Form 2848 to authorize an individual to sign Form 907 on the taxpayer's behalf.

- (6) After both agreements are signed, the second original is sent to the taxpayer.

4.23.13.9  
(08-05-2020)  
**Appeals to the Federal  
Courts**

- (1) Taxpayers who disagree with IRS findings after the Appeals conference or taxpayers choosing to forgo the appeals process are generally entitled to take their case to:
  - U.S. District Court,
  - U.S. Court of Federal Claims,
  - Bankruptcy Court, and in some cases,
  - U.S. Tax Court.

Each of these courts is independent of the IRS. Different procedures and time limits apply on which court will hear the case.

- (2) Generally, the United States Tax Court does not have jurisdiction over employment tax cases. However, the United States Tax Court does have jurisdiction over certain IRC 7436 cases. See IRC 7442. Employment tax cases can also end up in Tax Court through Collection Due Process hearings.
- (3) The taxpayer may litigate other types of employment tax cases in either the United States District Court or the United States Court of Federal Claims. Before taxpayers can initiate suit in either of these courts, they will have to pay, at a minimum, the employment tax assessment attributable to one employee for any one quarter and file a claim for refund of the tax. Once the claim for refund is denied or six months elapse after filing the Form 94x-X without any action by the Service, the taxpayer may initiate suit.

**Note:** See Pub 5, Your Appeal Rights and How to Prepare a Protest if You Don't Agree.

4.23.13.10  
(01-08-2016)  
**Repayments,  
Reimbursements and  
Employee Consents**

- (1) An employer has a duty to ensure that its employees' rights to recover overpaid taxes that were withheld are protected. See Treas. Regs. 31.6402(a)-2(a)(2), Treas. Regs. 31.6413(a)-1, and Rev. Rul. 81-310 .
- (2) The employer's certifications on the "X" forms address the requirement to:
  - a. Repay or reimburse employees for the overcollection of taxes, or
  - b. Obtain consents from employees to file a claim on their behalf.

**Note:** An employer "reimburses" an employee by applying the overwithheld amount against taxes to be withheld on future wages.
- (3) With respect to amounts of social security and Medicare taxes collected in a prior year, the employer must obtain a written statement from the employee certifying that the employee has not made any previous claims (or the claims were rejected) and will not make any future claims for refund or credit of the amount of the overcollection. See Treas. Regs 31.6402(a)-2(a)(2)(ii) and Treas. Regs 31.6413(a)-1(a)(2)(v).
- (4) For overcollected federal income tax withholding (FITW) and Additional Medicare Tax (AdMT), the employer is required to repay or reimburse the employee prior to the end of the calendar year in which the wages were paid or an adjustment may not be made to correct the error. See Treas. Regs. 31.6413(a)-1(a) and (b).
- (5) IRC 6414 permits refunds of FITW to an employer only to the extent the amount of the FITW overpayment was not actually deducted and withheld from an employee. Similarly, under Treas. Regs. 31.6402(a)-2(a)(1)(iii), employers may claim a refund of overpaid AdMT only if the employer did not withhold the overpaid AdMT from the employee's wages.

**Note:** An employee may claim a refund of overpaid FITW and AdMT on Form 1040 , U.S. Individual Income Tax Return, or, if the employee has filed Form 1040, on Form 1040X , Amended U.S. Individual Income Tax Return.

- (6) For adjusted returns, the employer must retain appropriate records to reflect that the employee has been repaid or reimbursed. The employer must obtain and retain the written receipt of the employee showing the date and amount of the repayment or the evidence of reimbursement. For purposes of overpayment adjustments of employee social security and Medicare taxes overcollected in a prior year, the employer must also obtain and retain the employee's written statement that the employee has not claimed refund or credit of the amount of the overcollection, or if so, such claim has been rejected, and that the employee will not claim refund or credit of the amount. The examiner should use sample testing to verify compliance with these record retention requirements.
- (7) For adjusted returns, the requirement to repay or reimburse does not apply to the extent that the taxes were not withheld from the employee. Nor do they apply if, after having made reasonable efforts, the employer cannot locate the employee or, for prior year social security and Medicare taxes, the employee did not provide the required written statement. If, after the employer's reasonable efforts to secure the required written statement the employee does not furnish it, the employer may make an adjustment of the overpaid employer social security and Medicare taxes.



- (8) For claims, the employer must retain appropriate records reflecting that it has repaid or reimbursed its employee or obtained the employee's consent. The employer must obtain and retain the written receipt of the employee showing the date and amount of the repayment, the evidence of reimbursement, or the written consent of the employee. For purposes of claims for refund of employee social security and Medicare taxes overcollected in a prior year, the employer must also obtain and retain the employee's written statement that the employee has not claimed refund or credit of the amount of the overcollection or, if so, such claim has been rejected and that the employee will not claim refund or credit of the amount. The examiner should use sample testing to verify compliance with these record retention requirements.

**Note:** Under Treas. Reg. 31.6402(a)-2(a)(1)(iii), employers may claim a refund of overpaid AdMT only if the employer did not withhold the overpaid AdMT from the employee's wages. Thus, the rules for employee consents are not applicable to overpayments of AdMT.

- (9) For claims, generally, if the employer has not repaid or reimbursed an employee, a refund for the employer share of the overpaid social security and Medicare taxes will not be allowed unless the employer has secured the employee's consent and included a claim for the refund of the employee share. However, these requirements do not apply if, after the employer's reasonable efforts to obtain the employee's consent (including any required written statement), the employer cannot locate the employee or the employee does not furnish either the employee consent or a response indicating that the employee is not authorizing the employer to claim a refund of social security and Medicare taxes on his or her behalf. In these cases, the employer may claim a refund of the overpaid employer share of the tax but may not obtain a refund of the employee share.
- (10) Under *Chicago Milwaukee Corp. v. U.S.*, 40 F.3d 373 (C.A. Fed. 1994), an employer need not repay or reimburse its employees or obtain the employees' consents for the filing of a refund claim prior to filing the claim, in order for the claim to be valid. For example, the Instructions for Form 941-X indicate that an employer may not have repaid or reimbursed its employees or obtained their consents prior to filing a claim, in cases where the period of limitation on credit or refund is about to expire. However, the employer must repay or reimburse its employees or obtain the employees' consents before the IRS can grant the claim.
- (11) Rev. Proc. 2017-28 provides guidance to employers on the requirements for employee consents used by an employer to support a claim for refund of overpaid taxes under the Federal Insurance Contributions Act and the Railroad Retirement Tax Act. It provides the basic requirements for both the request for a consent and for the employee consent itself, and permits a consent to be requested, furnished, and retained in an electronic format as an alternative to a paper format. It is effective for employee consents requested on or after June 5, 2017. For employee consents requested before that date, employers may rely on the proposed revenue procedure set forth in Notice 2015-15.

**This Page Intentionally Left Blank**

**Exhibit 4.23.13-1 (08-05-2020)**  
**Form 5344**

The items completed on Form 5344 are dependent on whether the Form 94x-X is an “Revenue Base Protection” (RBP) Claim. RBP is required when the claim received would result in a refund of money to the taxpayer if the amount claimed was allowed in-full or in-part. When claims for refunds are received during an in-process examination and are for the same tax periods that are already open, it is up to the examiner to determine if the issues on the Form 94x-X are significant in comparison to the other audit issues being addressed.

RBP procedures do **not** apply to claims for abatement, audit reconsiderations, or adjusted returns where any refund would be applied to a subsequent quarter. They also do not apply if the amounts reflected on the Form 94x-X have already been paid to the taxpayer since there is no longer a claim.

If the examiner determines the claim is RBP, then the examination time must be split between regular exam time (time spent on issues not reflected on the Form 94x-X) and RBP time (time spent on issues on the Form 94x-X) and the following items must be completed:

- Item 21: # Amount Claimed (dollars claimed)
- Item 22: Dollars Protected (the amount of the claim disallowed)
- Item 23: RBP Hours (time charged)
- Item 24: Claim Type (“L” is used for employment tax claims)

How the time is captured depends on whether a refund would be due to the taxpayer if the claim were to be allowed in-part or in-full. If the reduction in tax were allowed in-full or in-part and there is no money that is to be refunded to the taxpayer, these are not claims for refund for purposes of RBP procedures. They are considered to be either a “request for abatement” of unpaid tax, or an “audit reconsideration”, if based on a prior examination adjustment. The examination time would be captured as regular examination time.

- If the tax assessment is partially paid, a subsequent claim might result in part refund and part abatement. IRM 4.4.12.5.34, Revenue Base Protection Section (Claim for Refund) provides an example of a part refund/part abatement allocation to help determine the amount of the claim to be considered as RBP.
- Time spent on “affirmative issues” presented by a taxpayer during an examination is often considered RBP time. If allowing the affirmative issue(s) would result in the refund of a previously paid tax, examining these issues would be RBP time.
- Occasionally, time spent examining an original return can be considered RBP time. If the original return refund has been frozen pending an examination, any time spent examining the issue related to the frozen refund is considered RBP time.

**Note:** “Affirmative Issue”: Issue information that is supplied by the taxpayer that could result in either a decrease to taxpayer’s taxable income or an increase to allowable credits. (Taxpayer’s favor)

**Exhibit 4.23.13-2 (11-02-2012)****Instructions for Completion of Form 3870 by the Examiner**

**This form will be completed in ALL cases involving a Form 94x-X where the taxpayer has marked “Adjusted Employment Tax Return” in Part 1 of the form.**

Complete all pertinent information in Blocks 1 through 10

Complete Block 11 as follows: “The Taxpayer filed a Form 94x-X requesting an adjustment on *Date1*. Please input the following credit transfer: **From:** *MFT: XX, Tax Period: XXXXXX, Transaction Code: 830, Date2: XX/XX/XX. Amount: \$ XXXX. To: MFT: XX, Tax Period: XXXXXX, Transaction Code: 710, Date3: XX/XX/XX Amount: \$ XXXX.*”

<b>Legend for Form 3870 Block 11 wording:</b>
<i>94x-X:</i> The specific type of “X” return (941-X, 943, 944-X, 945-X, CT-1X that was filed)
<i>Date1:</i> The date the “X” return was received by the Service
<i>MFT:</i> The specific MFT for the type of return
<i>Tax Period:</i> The specific taxpayer period
<i>Date2:</i> The due date of the return for which the Form 94x-X is filed
<i>Date3:</i> The 1st day of the quarter in which the Form 94x-X is filed
<i>Amount:</i> The examiner will never complete the Amount. This will be completed by Employment Tax - Workload Selection and Delivery (ET-WSD) once the case is closed.

**Example:** A Form 941-X with the adjusted return block checked for the 201009 quarter. The return is received by the Service on September 21, 2011. The audit results in a credit of \$1,000. The wording in Block 11 of Form 3870 would be: “The taxpayer filed a Form 941-X for the period above on 9/21/2011. Please input the following credit transfer: From: MFT 01, Tax Period 201009, Transaction Code: 830, Date 10/31/2010, Amount: \$ \_\_\_\_\_. To: MFT 01, Tax Period 201109, Transaction Code: 710, Date 7/1/2011, Amount: \$ \_\_\_\_\_.”

**Exhibit 4.23.13-3 (08-05-2020)**  
**FAQs on Form 941-X Claims**

An employer uses:

- Form 941-X, Adjusted Employer's QUARTERLY Federal Tax Return or Claim for Refund, to claim refunds or make adjustments (BOTH underreported and overreported amounts).
- Form 843, Claim for Refund and Request for Abatement, to request a refund or abatement of assessed interest or penalties.

A line-by-line discussion of Form 941-X follows in a Q & A format.

**QUESTION #1:** What do checkboxes 1 and 2 on Form 941-X in Part 1, "Select ONLY one process," tell the examiner?

**ANSWER #1:** Checkboxes 1 and 2 identifies whether the employer wants to correct a previously filed Form 941 using the adjustment process or the claim process. For more information about why the employer may choose to file an adjusted return or claim for refund see the last page of Form 941-X.

- Part 1, Checkbox 1: Returns with the "Adjusted employment tax return" checkbox marked alerts the examiner that the employer is not requesting a refund. An employer will use the adjustment process if it underreported employment taxes and is making a payment, or if it overreported employment taxes and will be applying the credit to Form 941 for the period during which it files Form 941-X. If a Form 941-X with Checkbox 1 marked is received, contact an employment tax analyst in Specialty Examination Policy via e-mail.
- Part 1, Checkbox 2: Returns with the "Claim" checkbox marked alerts the examiner that the employer is requesting a refund.

**QUESTION #2:** If claim is for a prior year: What does Checkbox 3, on Form 941-X in Part 2, "Complete the certifications", mean?

**ANSWER #2:** An employer is certifying that it filed or will file Forms W-2 or Forms W-2c with the SSA, as required, showing its employees' correct wage and tax amounts. Verify with the employer whether they have already filed Forms W-2 and/or Forms W-2c:

- If filed, document the filing date in the workpapers.
- If the employer has not already filed Forms W-2c, notify the employer that the forms must be filed by the last day of January of the following year.
- If the original Forms W-2 are correct, no Forms W-2c are needed. Document this in the workpapers.

**QUESTION #3:** What do checkboxes 4a, b, and c, on Form 941-X in Part 2, "Complete the certifications," mean?

**ANSWER #3:** Checkboxes 4a, b, and c alerts the examiner that the employer is making the certifications required when filing the Form 941-X to adjust a previously filed Form 941. (See Part 1, Checkbox 1 to ensure it is marked.)

**QUESTION #4:** What do checkboxes 5a, b, c, and d on Form 941-X in Part 2, "Complete the certifications," mean?

**ANSWER #4:** Checkboxes 5a, b, c, and d alerts the examiner that the employer is filing the Form 941-X to claim a refund or abatement of overreported taxes on a previously filed Form 941. (See Part 1, Checkbox 2 to ensure it is marked.)

**Exhibit 4.23.13-3 (Cont. 1) (08-05-2020)**  
**FAQs on Form 941-X Claims**

<b>Checkbox 5a:</b>
The employer certifies that the employees have been repaid or reimbursed the employees' share of overcollected social security and Medicare taxes, and
If claim is for a prior year, the employer is also certifying that it has obtained each employee's written statement for amounts collected in a prior year confirming that the employee has not made any previous claims (or the claims were rejected) and will not make any future claims for refund or credit of the over withheld amount.
Under Treas. Regs. 31.6402(a)-2(a)(2)(i), the employer shall retain, as part of its records, one of the following (whichever is used to support the claim):
The written receipt of the employee showing the date and amount of the repayment,
The record of reimbursement, or
The written consent of the employee (when the employee has not been repaid or reimbursed). [See "consent" discussion in Checkbox 5b.] The employer shall also retain the employee's written statement for amounts collected in a prior year as part of the employer's records.

<b>Checkbox 5b</b>
Alerts the examiner that the overreported taxes includes the employee's share of social security and Medicare taxes and the affected employee has not yet been repaid or reimbursed the employee share of such taxes. The employer certifies that:
A consent from each affected employee was received granting permission to file a claim for refund on the employee share of such taxes, and
The consent must include a written statement, if the claim is for a prior year. See description of "written statement" in Checkbox 5a above.

**Note:** An employer may file a Form 941-X prior to obtaining consents (such as a protective claim) but must obtain the consents before the refund will be allowed and paid. Consents are necessary to perfect the actual dollar amount of the refund. The IRS does not provide a mandatory form for obtaining employee consents.

If an employer files a claim for refund based on a certification that consents were secured from the employees, the IRS will refund the taxes to the employer, who will then give each employee his or her share. In cases where consents have not been secured by the employer, the examiner will:

- Determine the merit of the request for refund or abatement, and
- Inform the employer no refund may be paid for any employee until the consent is secured.

Allow the employer a reasonable amount of time to secure consents See *Chicago Milwaukee Corporation v. United States*, 40 F.3d 373; Rev. Rul. 81-310, 1981-2 C.B. 241; and Rev. Rul. 2009-39, 2009- 52 I.R.B. 951. Further guidance is found in FSA 200044001 (November 3, 2000) at: <http://www.irs.gov/pub/irs-wd/0044001.pdf>

The consent must affirmatively state that the employee authorizes the employer to claim a refund for the overpayment of the employee's share of tax for the taxable year. For amounts collected in a prior year, the consent must include the employee's statement that:

**Exhibit 4.23.13-3 (Cont. 2) (08-05-2020)**  
**FAQs on Form 941-X Claims**

- No previous claims for refund or credit of the taxes have been made by the employee for prior years (or that the claims were rejected), and
- No subsequent claim for refund or credit of such taxes will be made by the employee.

The consent, including any required written statement for amounts collected in a prior year, must be retained as long as their contents may be material in the administration of any internal revenue law, but not less than four years. Copies must be submitted to the IRS if requested.

**Note:** No refund can be allowed for any employee share where the employer did not receive consent from the employee.

After an employer has made reasonable efforts to secure the consents including the written statement for amounts collected in a prior year, the IRS may refund only the employer's share of the overpaid taxes with respect to an employee who did not furnish the requested consent and statement.

Checkbox 5c
Alerts the examiner that employer certifies that the claim for refund or abatement is only for the employer's share of social security and Medicare taxes. The employer is also certifying that the affected employees:
Did not give consent to file a refund for the employee's share of social security and Medicare taxes,
Could not be found, or
Would not (or could not) give the written statement.

This is one type of an "Employer Only" claim.

Even if the Form 941-X is requesting a refund or abatement of the employer's share of taxes, the employer must notify the employees of the error since the amounts in question were withheld from the employee's wages. It is well established that an employer may not recover the employer's share of an overpayment without first protecting the interests of the employees. See *Atlantic Department Stores, Inc. v. United States*, 557 F.2d 957; *Entenmann's Bakery, Inc. v. United States*, 465 F.Supp. 1118; *Macy's New York, Inc. v. United States*, 484 F.Supp. 181; and General Counsel Memo 38786, 1981.

An employer is better suited than an employee to know that taxes have been overpaid. Thus, an employer may not receive a refund of the employer's share of overpaid social security, and Medicare taxes without making reasonable efforts to protect the employees' interests. See Rev. Rul. 81-310, 1981-2 C.B. 241.

Checkbox 5d
Alerts the examiner that the employer certifies that the overreported amount is only for federal income tax, social security tax, Medicare tax, or Additional Medicare Tax that was not withheld from employee wages. This is another type of an "Employer Only" claim.
The employer does not notify the employee of this error since the amounts in question were not actually withheld from the employee's wages (i.e., math error on Form 941). In these cases, the employee is neither harmed nor benefited by the error.



**Exhibit 4.23.13-3 (Cont. 3) (08-05-2020)**  
**FAQs on Form 941-X Claims**

**Note:** If the reason for the Form 941-X claim for refund or abatement is taxes withheld due to the “gross up” of wages by the employer, Checkbox 5d cannot apply. See Question 8 for more information regarding “grossed up” wages and withholding.

**Rules for Additional Medicare Tax:**

- Under Treas. Regs. 31.6402(a)-2(a)(1)(iii), an employer may claim a refund of overpaid Additional Medicare Tax only if the employer did not deduct or withhold the overpaid Additional Medicare Tax from the employee’s wages.
- Under Treas. Regs. 31.6402(a)-2(b)(3), an employee may claim a refund of overpaid Additional Medicare Tax on Form 1040, U.S. Individual Income Tax Return, or if the employee has filed Form 1040, on Form 1040X, Amended U.S. Individual Income Tax Return.

Thus, the rules for employee consents are not applicable to overpayments of Additional Medicare Tax. The employer can mark any or all of these checkboxes (5a, 5b, 5c, and 5d) as applicable but must mark at least one. An employer may need to check more than one box. If the employer obtained consents from some employees but could not locate or secure the cooperation of the remaining employees, the employer must check all applicable boxes. An employer must provide a summary on Line 25 (April 2013 version), Line 23 (April 2014 or April 2015 version) or Line 24 (April 2017 version) of the amount of the corrections for both the employees who provided consents and for those who did not. **The examiner must “look behind” the Form 941-X to verify and document that the employer did indeed complete these actions. The examiner’s findings must be fully documented in the workpapers.**

**Note:** Keep in mind the period of limitations for filing Forms 941-X. IRC 6511(a) provides that a claim for credit or refund must be made within three years from the time the return was filed or two years from the time the tax was paid, whichever is later, or, if no return was filed, within two years from the time the tax was paid. In computing the period of limitations, IRC 6513(c) provides that employment tax returns reporting FICA tax or FITW for any period ending with or within a calendar year filed before April 15 of the succeeding calendar year are deemed filed on April 15 of such succeeding calendar year. Likewise, IRC 6513(c) provides that FICA tax or FITW paid during any period ending with or within a calendar year before April 15 of the succeeding calendar year is deemed paid on April 15 of the succeeding calendar year.

**Workpaper Documentation:** The verification of employee consents, including information from written statements, will be summarized in a spreadsheet workpaper and will list the affected employees as well as the computation of the amount of refund. The examiner will review all returned consents or use sample testing to verify compliance with the requirements of employee consents. The number of consents reviewed will depend on the judgment of the examiner and the number of affected employees. Non-compliant consents will be discussed with the employer. The examiner and employer will have to determine if and when there will be a deadline for any follow up-or corrective actions. However, none of these steps are required if the amounts in question were not actually withheld or treated as withheld from the employee’s wages. If Checkbox 5d is marked, the examiner must verify that there was no withholding on the wages. The workpapers will be documented for all findings.

**Note:** The gross-up of wages is treated as though withholding occurred. For more information, see Question #8 below regarding grossed-up of wages.

**QUESTION #5:** What is the purpose of Part 3 of Form 941-X, “Enter the corrections for this quarter”?



**Exhibit 4.23.13-3 (Cont. 4) (08-05-2020)**  
**FAQs on Form 941-X Claims**

**ANSWER #5:** Part 3 is used by the employer to report the corrections to each line of a previously filed Form 941 and to calculate the amount of the refund. The examiner will verify that the calculations are mathematically correct. These amounts may change (increase or decrease) during the examination of the Form 941-X. This is referred to as “perfecting the dollar amount.”

**Rules for Additional Medicare Tax:** An employer cannot adjust amounts reported as Additional Medicare Tax withheld in a prior calendar year unless it is to correct an administrative error or IRC 3509 applies. An administrative error occurs if the amount the employer entered on Form 94x is not the amount that the employer actually withheld. Examples include mathematical or transposition errors. If a prior year error was a non-administrative error, an employer may correct only the wages and tips subject to Additional Medicare Tax withholding. See the Instructions for Form 941-X.

**QUESTION #6:** What are the purposes of Part 4, “Explain your corrections for this quarter”, of Form 941-X?

**ANSWER #6:** Part 4 provides an explanation from the employer of why the Form 941- X was filed.

- *First checkbox in Part 4, “Check here if any corrections you entered on a line include both underreported and overreported amounts”:* This box indicates that the employer has netted both overreported and underreported amounts. If this box is marked, there must be a detailed explanation in Part 4 (Line 25, April 2013 version of Form 941-X, Line 23, April 2014 or April 2015 version of Form 941-X or Line 24, April 2017 version) for both the overreported and underreported amounts used to calculate the netted amount.
- *Second checkbox in Part 4, “Check here if any corrections involve reclassified workers”:* This box indicates that the employer filed a Form 941-X that involves reclassified workers. The workers could be independent contractors reclassified as employees or employees reclassified as independent contractors. If this box is marked, there must be a detailed explanation in Part 4 (Line 25, April 2013 version of Form 941-X, Line 23, April 2014 or April 2015 version of Form 941-X, or Line 24, April 2017 version).

Regardless of the type of reclassification, the examiner will:

- Inquire about the reclassified workers,
- Verify that any refund or abatement is correct, and
- Document all findings in the workpapers.

The Instructions for Form 941-X provide more information on how to complete the rest of the Form 941-X for reclassified workers.

**Part 4, Line 25 (April 2013 version), Line 23 (April 2014 or April 2015 version) or Line 24, April 2017 version, “You must give us a detailed explanation of how you determined your corrections.”**

The employer is providing an explanation of why the Form 941-X was filed. This must be a detailed explanation of how and why the requested refund amount was determined. **This is the most important line on the form.** It provides the information needed to determine the merit of the claim and the accuracy of both overreported and underreported amounts when netted by the employer. If the explanation provided is not sufficient to allow the decrease in wages and taxes:

Obtain more information by asking questions and securing additional support from the employer,

Understand and accept the justification for the explanation of the claim , and

**Exhibit 4.23.13-3 (Cont. 5) (08-05-2020)**  
**FAQs on Form 941-X Claims**

**Part 4, Line 25 (April 2013 version), Line 23 (April 2014 or April 2015 version) or Line 24, April 2017 version, “You must give us a detailed explanation of how you determined your corrections:”**

Document the findings in the workpapers.

Treas. Reg. 31.6402(a)-2(a)(1)(ii) requires the employer to explain in detail the grounds and facts they relied on to support each correction.

The Instructions for Form 941-X (April 2014 and April 2015 versions) warn employers that explanations such as “social security and Medicare wages were overstated” or “administrative/payroll errors were discovered” are insufficient. The instructions tell the employer that the following information should be provided in the explanation for each correction:

- Form 941-X line number(s) affected,
- Date the employer discovered the error,
- Difference (amount of the error), and
- Cause of the error.

**QUESTION #7:** Are paid preparers required to complete the section on Form 941-X labeled: “Paid Preparer Use Only”?

**ANSWER #7:** Yes. All boxes must be completed if the preparer was paid to prepare Form 941-X and was not an employee of the filing entity. The Instructions for Form 941-X provide more information regarding the definition of a Paid Preparer.

**QUESTION #8:** What should an examiner be aware of if they are assigned a claim that includes grossed-up wages?

**ANSWER #8:** The following is the Service’s position regarding a request for a refund of taxes that resulted from a gross up of wages due to a pre-arranged agreement. The employer generally states that it paid all of the employment taxes on the wages earned by employees without actually withholding the taxes per a prearranged gross-up plan. Form 941-X, checkbox 5d may be marked to indicate that it is the position of the employer that the Form 941-X amounts were not withheld from the employee’s wages thus no notification of the affected employees is required. It is the position of the Service that these taxes paid by the employer on behalf of the employee should be included in the employee’s wages and reported on Form W-2. The taxes must be “treated as actually withheld” from the employee’s wages. Pursuant to Treas. Regs. 31.6402(a)-2(a), an employer has a duty to assure that its employee’s rights to recover overcollected taxes are protected by repaying or reimbursing overcollected amounts. Alternatively, an employer may obtain the employee’s consent to the filing of the refund claim. If, after the employer’s reasonable efforts to obtain the employee’s consent or secure the required written statement, the employee does not furnish one or the other of them, the employer may claim a refund of the overpaid employer share.

**Note:** Chief Counsel Advice 201414019 (2014) provides detailed information regarding such claims. See <http://www.irs.gov/pub/irs-wd/1414019.pdf>