



MANUAL TRANSMITTAL

Department of the Treasury
Internal Revenue Service

4.23.22

JANUARY 8, 2021

EFFECTIVE DATE

(01-08-2021)

PURPOSE

- (1) This transmits revised IRM 4.23.22, Employment Tax, Unagreed Employment Tax Case Procedures.

MATERIAL CHANGES

- (1) IRM 4.23.22.1.1. Renamed "Background" and updated content.
- (2) IRM 4.23.22.1.6. Added additional information on the Taxpayer Advocate Service (TAS) and Privacy, Governmental Liaison and Disclosure.
- (3) IRM 4.23.22.4.2. Deleted Rev. Proc. 2017-25, 2017-14 I.R.B. 1039 from guidance for LB&I in (2) and added to Note for SB/SE in (3), as it applies to SB/SE.
- (4) IRM 4.23.22.5. Added information on cases designated for litigation and a cross-reference to IRM 33.3.6, Other Legal Advice; Designating a Case for Litigation, and IGM NHQ-04-0820-0003, Interim Guidance on Designation of Cases for Litigation.
- (5) IRM 4.23.22.8.6(4). Added "Reminder" that examiners and group managers should ensure all workpapers and documents related to all the issues are uploaded to IMS.
- (6) IRM 4.23.22.11.1(3). Added "Reminder" that Form 886-A should not be enclosed with Letter 3523.
- (7) IRM 4.23.22.11.1(11)(b). Potentially confusing language modified.
- (8) IRM 4.23.22.11.3.1. Section title changed to: Signature Requirements for Delegates Listed in Delegation Order 4-26.
- (9) IRM 4.23.22.11.3.2. Section title changed to: Signature Requirements when Campus Director Redelegates Authority.
- (10) IRM 4.23.22.11.8(1). Reference changed to reflect the consolidation of the Bankruptcy Handbook to new IRM 4.27.1, Bankruptcy - Examiner Responsibilities and Procedures.
- (11) IRM 4.23.22.11.16(2). Added Enrolled Retirement Plan Agents to list of representatives.
- (12) Editorial, typographical, and technical changes have been made throughout this section.

EFFECT ON OTHER DOCUMENTS

This material supersedes IRM 4.23.10, dated May 21, 2018. Information on Interim Guidance Memorandum NHQ-04-0820-0003, Interim Guidance on Designation of Cases for Litigation, issued August 24, 2020, is incorporated into this IRM.

AUDIENCE

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

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

4.23.22

Unagreed Employment Tax Case Procedures

Table of Contents

- 4.23.22.1 Program Scope
 - 4.23.22.1.1 Background
 - 4.23.22.1.2 Authority
 - 4.23.22.1.3 Responsibilities
 - 4.23.22.1.4 Program Objectives and Review
 - 4.23.22.1.5 Acronyms
 - 4.23.22.1.6 Related Resources
- 4.23.22.2 Overview
- 4.23.22.3 General Case Closing Guidelines and Time Frames
- 4.23.22.4 Appeals Alternative Dispute Resolution Programs
 - 4.23.22.4.1 Early Referral to Appeals
 - 4.23.22.4.2 Fast Track Settlement Program (FTS)
- 4.23.22.5 Eligibility for Appeals
- 4.23.22.6 30-Day Letters: Unagreed Case Procedures
- 4.23.22.7 Unagreed Case Procedures - Insufficient Time Remaining on Statute of Limitations
- 4.23.22.8 Response to 30-Day Letter
 - 4.23.22.8.1 Request for Appeals Conference – Protest Submitted
 - 4.23.22.8.2 Review of Protests
 - 4.23.22.8.3 Follow-Up to 30-Day Letters
 - 4.23.22.8.4 Additional Information Received
 - 4.23.22.8.5 Full or Partial Agreement
 - 4.23.22.8.6 No Response to 30-Day Letter
 - 4.23.22.8.7 Taxpayer Fails to Extend Statute of Limitations
- 4.23.22.9 Extension of Time to Respond
- 4.23.22.10 Cases Returned from Appeals
 - 4.23.22.10.1 Cases Returned from Appeals with New Information
 - 4.23.22.10.2 Statute of Limitations on Cases Returned from Appeals
 - 4.23.22.10.3 Undeveloped Cases
- 4.23.22.11 Special Procedures for Letter 3523 under IRC 7436
 - 4.23.22.11.1 General Overview of Section 7436 Procedures
 - 4.23.22.11.2 Prompt Issuance of Letter 3523
 - 4.23.22.11.3 Authority for Issuance
 - 4.23.22.11.3.1 Signature Requirements for Delegates Listed in Delegation Order 4-26
 - 4.23.22.11.3.2 Signature Requirements when Campus Director Redelegates Authority
 - 4.23.22.11.3.3 Disposition of Copies

-
- 4.23.22.11.4 Period for Filing Petitions if Letter 3523 is Addressed to Taxpayer Outside the United States
 - 4.23.22.11.5 Protests, Correspondence and Waivers Received After Issuance of a Letter 3523
 - 4.23.22.11.6 Appeals Refusal of Jurisdiction in Non-Docketed IRC 7436 Cases
 - 4.23.22.11.7 Notice of Petitions Filed
 - 4.23.22.11.8 Letter 3523 Transferee, Bankruptcy and Receivership Cases
 - 4.23.22.11.9 Letter 3523 on Assessment in Jeopardy
 - 4.23.22.11.10 Precautions Against Expiration of Period of Limitations for Assessment
 - 4.23.22.11.11 Letter 3523 on Electronically Filed Returns
 - 4.23.22.11.12 Mailing of Letter 3523
 - 4.23.22.11.13 Records of Mailing Letter 3523
 - 4.23.22.11.14 Letter 3523 Returned by the Post Office
 - 4.23.22.11.15 Correspondence or Taxpayer Contact Indicating Change of Address
 - 4.23.22.11.16 Authorized Representative Defined

4.23.22.1
(05-16-2018)
Program Scope

- (1) **Purpose:** IRM 4.23.22 explains the procedures for unagreed employment tax cases, including procedures for issuing Letter 3523 to taxpayers not eligible for consideration by the Independent Office of Appeals (Appeals) for cases involving IRC 7436 issues.
- (2) **Audience:** This section contains instructions and guidelines for all Large Business & International (LB&I), Tax Exempt/Government Entities (TE/GE), and Small Business/Self-Employed (SB/SE) employees dealing with employment tax issues.
- (3) **Policy Owner:** Director, Specialty Examination Policy of the Small Business/Self-Employed Division.
- (4) **Program Owner:** Program Manager - Employment Tax Policy. The mission of Employment Tax Policy is to establish effective policies and procedures, to support compliance with employment tax laws.
- (5) **Primary Stakeholders:**
 - Employment Tax – Workload Selection and Delivery (SE:S:DCE:E:HQ:ECS:S:ETEGCS:EWSD)
 - Specialty Examination - Employment Tax (SE:S:DCE:E:SE:ET)
 - Examination - Specialty Policy, Employment Tax Policy (SE:S:DCE:E:HQ:SP:ETP)
 - Other areas that may be affected by these policies and procedures include Appeals, Counsel, SB/SE Examination, LB&I, and TE/GE.

4.23.22.1.1
(01-08-2021)
Background

- (1) This IRM is specifically created to address unagreed employment tax procedures. For additional information on report writing, see IRM 4.23.10, Report Writing Guide for Employment Tax Examinations.

4.23.22.1.2
(05-16-2018)
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, 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/privacy-disclosure/delegation-orders-and-policy-statements-by-process>, summarizes data contained in the applicable IRM sections under IRM 1.2, relating to Delegation Orders, in a single, electronic source.
- (4) IRM 4.23 provides Servicewide instructions for all operating divisions with employees involved with the correct filing, reporting, and payment of employment taxes. IRM 4.23 serves as the foundation for consistent administration of

employment taxes by various IRS operating divisions. By providing one source of authority for all operating divisions, the IRS greatly reduces philosophical and procedural inconsistencies.

4.23.22.1.3
(05-16-2018)

Responsibilities

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

4.23.22.1.4
(05-16-2018)

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 1.1.16.3.3.3, 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.

4.23.22.1.5
(05-16-2018)

Acronyms

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

Acronym	Definition
AIMS	Audit Information Management Systems
ASED	Assessment Statute Expiration Date
BWH	Backup Withholding
CCP	Centralized Case Processing
EIN	Employer Identification Number
ERCS	Examination Returns Control System
ETER	Employment Tax Examiner's Report
FICA	Federal Insurance Contributions Act
FITW	Federal Income Tax Withholding
FSL/ET	Federal, State and Local/ Employment Tax Area, EO Examination
FTS	Fast Track Settlement
FUTA	Federal Unemployment Tax Act

Acronym	Definition
IMS	Issue Management System
ITG	Indian Tribal Governments
LB&I	Large Business & International
NCOA	National Change of Address Program
QLITC	Qualified Low Income Taxpayer Clinic
RCCMS	Reporting Compliance Case Management System
RRTA	Railroad Retirement Tax Act
SB/SE	Small Business/Self-Employed
SECA	Self-Employment Contributions Act Tax
SOL	Statute of Limitations
SSN	Social Security Number
STCP	Student Tax Clinic Program
TBOR	Taxpayer Bill of Rights
TCO	Tax Compliance Officer
TE/GE	Tax Exempt/Government Entities
TEGEDC	Tax Exempt/Government Entities Division Counsel
TIN	Taxpayer Identification Number
W&I	Wage and Investment

4.23.22.1.6
(01-08-2021)

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 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 4.10.8	Examination of Returns, Report Writing	This section includes guidelines for the preparation of audit findings, in terms of content and format; it also provides instructions for some case closing requirements.

(2) 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 Analyst Listing*.
- The web site “Examining an Employment Tax Case” at: [https://portal.ds.irsnet.gov/sites/vl014/pages/home.aspx?bookshelf=examining an employment tax case](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 TBOR, see <https://irssource.web.irs.gov/SitePages/Taxpayer%20Bill%20of%20Rights.aspx> and IRM 1.2.10.36, Policy Statement 1-236, “Fairness and Integrity in Enforcement Selection.”

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

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

- (5) Employment tax examiners should consider the disclosure provisions when preparing agreed and unagreed case reports. See the Privacy, Governmental Liaison and Disclosure web site at: <https://irssource.web.irs.gov/PGLD/Pages/Home.aspx> for additional information.

4.23.22.2
(05-16-2018)
Overview

- (1) Taxpayers are entitled to a fair and impartial administrative appeal of most IRS decisions, including many penalties. If agreement cannot be reached on any of the proposed adjustments, examiners should explain the procedure for administrative appeal as well as the option to pay any deficiency and file a claim for refund if the taxpayer or taxpayer's representative is not familiar with these procedures.
- (2) Managerial involvement is required in all unagreed cases. Examiners should be aware of the procedures in IRM 1.4.40.4.11.5, Unagreed Closing Procedures, and inform their group manager when they believe a case will have unagreed issues. The group manager's actions must be documented in the case file. Form 9984 may be used for this purpose.
- (3) Examiners should consider and provide information to the taxpayer on the alternative dispute resolution programs discussed in IRM 4.23.22.4, Appeals Alternative Dispute Resolution Programs, prior to issuing a 30-day letter.
- (4) Unless specifically excluded from Appeals consideration, all cases are eligible to be forwarded to Appeals as long as the taxpayer submits an adequate small case request or formal written protest that includes the information required in Pub 5, Your Appeal Rights and How to Prepare a Protest If You Don't Agree. See IRM 4.23.22.5, Eligibility for Appeals. Appeals will not accept a case with less than 365 days remaining on the statute of limitations. See IRM 4.23.22.11.10, Precautions Against Expiration of Period of Limitations for Assessment.

4.23.22.3
(05-16-2018)
General Case Closing Guidelines and Time Frames

- (1) All unagreed cases are to be closed within 20 days from the earlier of the date:
 - The 30-day letter defaults, or
 - The request for an Appeals conference is received from the taxpayer.
- (2) See (6) in IRM 4.23.10.2, General Case Closing Guidelines and Time Frames.

4.23.22.4
(05-16-2018)
Appeals Alternative Dispute Resolution Programs

- (1) When taxpayers disagree with proposed adjustments, it is beneficial to all parties to resolve disputes at the lowest level possible. IRC 7123 provides for alternative dispute resolution techniques by Appeals, which is separate from and independent of the IRS office that proposed the adjustment. Two processes that may expedite dispute resolution are:
 1. Early Referral to Appeals, and
 2. Fast Track Settlement.

- (2) In addition, as indicated previously, the Taxpayer Advocate Service (TAS) may be of assistance to taxpayers experiencing economic harm, who are seeking help in resolving tax problems that have not been resolved through normal procedures, or who believe that an IRS system or procedure is not working as it should. Pub 1546, Taxpayer Advocate Service - We Are Here to Help You, provides contact and additional information. The program is designed to alleviate taxpayer hardships that arise from systemic problems or the application of the Internal Revenue Code. In addition, see the TAS web site at: <http://tas.web.irs.gov>.

4.23.22.4.1
(05-16-2018)

Early Referral to Appeals

- (1) If the examiner and taxpayer are unable to reach agreement on one or more issues, the taxpayer should be encouraged to request early referral of these unagreed issues to Appeals. See IRM 8.26.4, Early Referral Procedures. Cases submitted to Appeals for Early Referral should have at least 365 days remaining on the statute of limitations since Appeals is taking jurisdiction over the issues submitted for Early Referral.
- (2) Certain employment tax issues that are appropriate for referral are described in Rev. Proc. 99-28, 1999-2 C.B. 109, and include:
- a. Worker classification issues,
 - b. Liability issues, such as the applicability of section 530 of the Revenue Act of 1978, IRC 3509 rates, and interest free adjustments, and
 - c. Other issues, such as whether certain payments are excepted from the definition of wages, e.g., fringe benefits.

4.23.22.4.2
(01-08-2021)

Fast Track Settlement Program (FTS)

- (1) The Fast Track Settlement Program (FTS) offers Examination personnel a way to resolve audit issues utilizing the settlement authority and mediation skills of Appeals while retaining jurisdiction of the case. FTS is designed to be completed within 120 days (for LB&I taxpayers) or 60 days (for SB/SE taxpayers). LB&I (or SB/SE), the taxpayer, and Appeals are active participants in the process, and all three parties must agree before a proposed resolution can be implemented. The Appeals FTS Official uses mediation techniques to lead LB&I (or SB/SE) and the taxpayer to self-determine the likely outcome of the dispute. For all cases:
- Once Appeals accepts a case for Fast Track Settlement, the examiner must update the case to Status Code "15". The case will remain in Status Code "15" until the Fast Track Settlement process is complete. At that time, the examiner must update the Status Code back to "12" and complete the audit.
 - Aging Reason Code "23" – "Fast Track Settlement cases accepted by Appeals," will be used by all Internal Revenue Agents (Series 0512) for Fast Track Settlement cases.
- (2) **For LB&I:** See Rev. Proc. 2003-40, the "LB&I/Appeals Fast Track Settlement" web site at , and IRM 4.51.4, LB&I/Appeals Fast Track Settlement Program (FTS). Additional information can be found in Pub 4539, Fast Track Settlement Brochure. Also see IRM 8.26.1, Fast Track Settlement for Large Business and International (LB&I) Taxpayers.
- (3) **For SB/SE:** Instructions on the FTS program are provided in Pub 5022, Fast Track Settlement - A Process for Prompt Resolution of Small Business Self Employed Tax Issues which is provided to the taxpayer during the discussion of the issues and proposed adjustments. See IRM 4.10.7.5.5, SB/SE Fast

Track Settlement, for FTS eligibility and procedures for SB/SE examination cases. Additional examination procedures include:

- Examiners must document the discussion of the process and the issuance of Publication 5022 in the case file. Either the taxpayer, examiner, or group manager can initiate the process at any time after an issue has been fully developed, but preferably before a 30-day (or equivalent) letter is issued.
- To apply for the SB/SE FTS program, the taxpayer and the group manager should submit a Form 14017, Application for Fast Track Settlement, to the local Appeals Team Manager. The application should include a summary of issues prepared by the examiner and a written response from the taxpayer.
- Any SB/SE Employment Tax Examiner working on an LB&I team audit will continue to follow FTS procedures used by the LB&I team coordinator.

Note: See IRM 8.26.2, Fast Track Settlement for Small Business/Self Employed (SB/SE) Taxpayers, for additional information. Also Rev. Proc. 2017-25 , 2017-14 I.R.B. 1039.

Note: For additional information on SB/SE Appeals Fast Track Settlement, see <http://mysbse.web.irs.gov/examination/tip/fts/default.aspx>.

4.23.22.5
(01-08-2021)
Eligibility for Appeals

- (1) Unless specifically excluded from Appeals consideration, all cases are eligible to be forwarded to Appeals as long as the taxpayer submits an adequate protest (when a formal written protest is required) or a small case request that includes the information required in Pub 5, Your Appeal Rights and How to Prepare a Protest If You Don't Agree.

Note: Generally, if the taxpayer submits new information or evidence to Appeals, or raises a new issue Examination has not considered, the case will be returned to Examination. See IRM 8.2.1.5, Returning a Case to Examination – ATE, and IRM 4.10.8.12.11, Cases Returned from Appeals.

- (2) The following is a list of cases that are excluded from Appeals consideration:
- a. Fewer than 365 days remain on the statute of limitations when the case is received in Appeals.
 - b. Request/claim for abatement of unpaid tax that is not an audit reconsideration. See IRM 4.10.8.8, Claims for Abatement, Audit Reconsiderations, and Supplemental Reports, (taxpayer has no judicial rights).
 - c. Taxpayer disagrees solely on moral, religious, political, constitutional, conscientious, or similar grounds. See IRM 8.1.1.3.1, No Appeals Conference or Concession on Certain Arguments.
 - d. Cases designated for litigation. See IRM 33.3.6, Other Legal Advice; Designating a Case for Litigation, and IGM NHQ-04-0820-0003, Interim Guidance on Designation of Cases for Litigation, for additional information.
 - e. Fraud cases involving criminal prosecution. See IRM 8.2.1.5, Returning a Case to Examination – ATE.

Note: See IRM 4.10.8.12, Unagreed Case Procedures (SB/SE Field and Office Examiners only).

4.23.22.6
(05-16-2018)
**30-Day Letters:
Unagreed Case
Procedures**

- (1) Procedures for preparation of the unagreed examination report and agreement forms can be found in IRM 4.23.10.16, Unagreed Employment Tax – Examination Reports.
- (2) The 30-day letter is issued in employment tax cases to advise taxpayers of all unagreed proposed adjustments to their tax liabilities, and of conclusions reached in no-change cases involving the disallowance in full or in part of claims for refund. Do not issue 30–day letters on cases accepted for Fast Track resolution.
- (3) 30–day letters are designed for specific types of cases. These letters advise taxpayers of appeal rights and are listed below:
 - a. Letter 950 series: For all unagreed employment tax cases except those involving claim disallowances or reconsideration of disallowed claims. Separate 30-day letters should be issued when both IRC 7436 and non-IRC 7436 issues are present.
 - b. Letter 950-C, Employment Tax 30-Day Letter - Tax Court (TC), IRC 7436 Issue: Issued in cases involving IRC 7436 issues. This applies to the re-classification of at least one worker and/or the determination that the taxpayer was not entitled to section 530 relief. This also applies to wage issues that are determined to be IRC 7436 issues. See IRM 4.23.5.2.2, IRC 7436 Issues.
 - c. Letter 950-D, Employment Tax 30-Day Letter: Issued for all other (i.e., non-IRC 7436) employment tax audit issues.
 - d. Letter 5376, Full or Partial Claim Disallowance - Employment Tax: For claim disallowance cases.
- (4) Cases closed to Appeals require at least 365 days on the statute of limitations when received in Appeals. See IRM 4.23.22.11.10, Precautions Against Expiration of Period of Limitations for Assessment. Therefore, it is recommended that at least 425 days remain on the statute of limitations when the 30-day letter is issued. This provides 30 days for the taxpayer to respond to the letter plus sufficient time for Technical Services to process the case. Form SS-10, Consent to Extend the Time to Assess Employment Taxes, should be provided to the taxpayer when issuing the 30-day letter if fewer than 365 days will remain on the statute by the time the case will be transferred to Appeals. If insufficient time will remain on the statute of limitations to be eligible for Appeals, follow the procedures in IRM 4.23.22.7, Unagreed Case Procedures - Insufficient Time Remaining on Statute of Limitations.
- (5) A copy of the applicable examination report and agreement forms will accompany the 30–day letter. These include:
 - a. Form 4666, Summary of Employment Tax Examination,
 - b. Form 4667, Examination Changes - Federal Unemployment Tax,
 - c. Form 4668, Employment Tax Examination Changes,
 - d. Form 4668-B, Report of Examination of Withheld Federal Income Tax for Withholding Reported on Forms 1099 and W-2G,
 - e. Form 4668-C, Employment Tax Examination Changes Report - Railroad,
 - f. Form 2504, Agreement to Assessment and Collection of Additional Tax and Acceptance of Overassessment (Employment Tax Adjustments Not Subject to IRC 7436),

- g. 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 Issues Not Addressed in this Exam), and/or
- h. Form 2504-T, Agreement to Assessment and Collection of Additional Employment Tax and Acceptance of Overassessment (Employment Tax Adjustments Subject to IRC 7436).

See IRM 4.23.10.16, Unagreed Employment Tax – Examination Reports.

- (6) If Pub 5146, Employment Tax Returns: Examinations and Appeal Rights, was not provided to the taxpayer at the beginning of the audit, the examiner should mail the publication to the taxpayer with the 30-day letter.

Note: Pub 5146 is required to be provided to the taxpayer at the initial appointment contact, per IRM 4.23.3.6.6, Contact With Taxpayers.

- (7) Pub 5, Your Appeal Rights and How to Prepare a Protest If You Don't Agree, must be provided to the taxpayer with the 30-day letter.
- (8) Form 13683, Statement of Disputed Issues, will be enclosed for all Letter 950-C and Letter 950-D mailings for which the small case request applies: the total amount of proposed additional tax, additions to tax and penalties, proposed overassessment, or claimed refund, credit, or abatement for each referenced tax return for each tax period does not exceed \$25,000.
- (9) Formal protests are required if the total tax or additions to tax and penalty for any referenced tax return for any tax period exceeds \$25,000. See IRM 4.10.8.12.9.3, Request for Appeals Conference.
- (10) If separate 30-day letters are used because the examination has both IRC 7436 issues and non-IRC 7436 issues, the tax and penalties for each period on **BOTH** reports are combined to determine if the amount exceeds the \$25,000 limit.
- (11) 30-day letter signature authority is delegated to the group manager:
 - For SB/SE Employment Tax, the signature line for the letters should contain the name of the Chief of the Employment Tax Program and title "Chief, Employment Tax."
 - For SB/SE general program, the signature line should contain the name and title of the Area Director.
 - For employment tax exams controlled by LB&I, the signature line should reflect the name of the LB&I Commissioner and title, "Commissioner, Large Business and International."
 - For ITG, the signature line should contain the group manager name and title.
 - For EO, the signature line should contain the name and title of the Director, EO Examinations.
- (12) The 30-day letter is sent by ordinary mail, except when in the judgment of
 - SB/SE Area Director or Chief, Employment Tax,
 - Commissioner, LB&I, or
 - Group Manager, ITG

the use of certified mail is deemed advisable. If certified mail is used, return receipts will be requested. See also IRM 4.10.8.12.7, Issuing 30-Day Letters (SB/SE Field and Office Examiners only).

Note: Generally, 30-day letters should be issued to the taxpayer and representative in person. However, if circumstances necessitate mailing the 30-day letter, the examiner should follow the procedures in this section.

- (13) After the 30-day letter has been mailed, the case will be placed in the 30-day suspense file pending further action by the taxpayer. To ensure consistent monitoring, the examiner must update the case to Status "13" by completing Form 5348, AIMS/ERCS Update (Examination Update), when the letter is forwarded to the group manager for signature. This will start the suspense period for 30-day monitoring.

Note: Employment Tax Compliance Officers (TCOs) do not use Status "13" on their cases; rather, they use the action codes and purge dates available to monitor cases after the 30-day letter has been issued. See IRM 4.23.21.6.3, Report Writing Procedures for No-Response Cases (No Show) or Unlocatable Taxpayers.

Note: EO will follow their own status update procedures using the TE/GE Reporting Compliance Case Management System (RCCMS), and, if necessary, Form 5595, TE/GE Update.

- (14) It is the examiner's responsibility to take timely actions during the 30-day period. In cases where the taxpayer responds with additional information, the case will be put back into Status "12" until agreement is reached or another 30-day letter is issued.
- (15) Assemble the case for closure and forward to the manager for review. See IRM 4.23.10.19.1, Assembly of Employment Tax Case File Folder - LB&I Cases, for LB&I case file assembly. See IRM 4.23.10.19.2, Assembly of Employment Tax Case File Folder - SBSE, for SB/SE and ITG procedures.
- (16) Examiners should follow the procedures in IRM 4.23.22.8, Response to 30-Day Letter, based on the type of response (or failure to respond) provided by the taxpayer to the 30-day letter.
- (17) When a taxpayer's case involves an issue which is recurring in nature, or for other reasons immediate consideration by Appeals is desired, the words "RECURRING ISSUE" should be annotated on Form 3198 or Form 3198-A, TE/GE Special Handling Notice, in red.
- (18) To assist Technical Services and other reviewers, copies (electronic and/or paper) of all report files should be included by the examiner in the case file. If an unagreed employment tax case is part of an examination involving one or more related income tax case(s), then when the employment tax case is closed, a copy of the examination report(s) and income tax return(s) for the related income tax case(s) should be placed in the employment tax case file, and a copy of the Employment Tax Examiner's Report (ETER) and employment tax returns should be placed in the income tax file(s).

4.23.22.7

(05-16-2018)

**Unagreed Case
Procedures - Insufficient
Time Remaining on
Statute of Limitations**

- (1) When there is insufficient time remaining on the statute of limitations for the taxpayer to be eligible to go to Appeals, and the taxpayer has not or will not extend the statute of limitations, the examiner should prepare and issue an examination report with the appropriate letter from (2) below. This will notify the taxpayer additional time is needed on the statute of limitations for Appeals to consider their case if it is unagreed, and allow 10 days for a response. Office examiners will update the ERCS action code to "07". If a statute extension has not been solicited, the examiner should follow the procedures in IRM 25.6.22, Extension of Assessment Statute of Limitations By Consent, then proceed as follows:
 - a. If the case is agreed and the taxpayer returns a signed agreement form, close the case using normal agreed procedures. See IRM 4.23.10.6, Notification Letters in Agreed Cases, and IRM 4.23.10.14, Agreed Employment Tax Reports.
 - b. If the case is unagreed and the taxpayer signs a consent to extend the statute of limitations that will allow sufficient time for the case to be considered by Appeals, prepare and issue a 30-day letter in accordance with procedures in IRM 4.23.22.6, 30-Day Letters: Unagreed Case Procedures.
 - c. If the case is unagreed and the taxpayer does not sign a consent, follow the procedures in IRM 4.23.22.8.6, No Response to 30-Day Letter.
- (2) The following letters will be used to transmit the examination report to the taxpayer when there is insufficient time on the statute of limitations for the taxpayer to be eligible for Appeals:
 - a. Letter 5153-F, Examination Report Transmittal – Insufficient Time on Statute (IRC 7436 Cases): Issued in cases involving IRC 7436 issues. This applies to reclassification of at least one worker and/or the determination that the taxpayer was not entitled to section 530 relief. This also applies to wage issues that are determined to be IRC 7436 issues. See IRM 4.23.5.2.2, IRC 7436 Issues.
 - b. Letter 5153-P, Examination Report Transmittal – Insufficient Time on Statute (Non-IRC 7436 Cases): Issued for all other (i.e., non-IRC 7436) employment tax audit issues.
 - c. Letter 5153-Q, Report Transmittal – Insufficient Time on Statute (Claim –IRC 7436 Cases): Issued in claim cases when other adjustments are proposed involving IRC 7436 issues. This applies to reclassification of at least one worker and/or the determination that the taxpayer was not entitled to section 530 relief. This also applies to wage issues that are determined to be IRC 7436 issues. See IRM 4.23.5.2.2, IRC 7436 Issues.
 - d. Letter 5153-G, Report Transmittal – Insufficient Time on Statute (Claim – Non-IRC 7436 Cases): Issued in claim cases when other (i.e., non-IRC 7436) employment tax audit adjustments are proposed.

4.23.22.8

(05-16-2018)

**Response to 30-Day
Letter**

- (1) The taxpayer may respond to the 30-day letter in a variety of ways. The following sub-sections provide instructions depending on the type of response.

4.23.22.8.1
(05-16-2018)

**Request for Appeals
Conference – Protest
Submitted**

- (1) Examiners conducting employment tax examinations should follow the procedures in IRM 4.10.8.12.9.3, Request for Appeals Conference (SB/SE Field and Office Examiners only), when the taxpayer requests an Appeals conference.
- (2) The taxpayer's written protest will be reviewed to determine whether the protest complies with the requirements outlined in Pub 5, Your Appeal Rights and How To Prepare a Protest if you Don't Agree. See IRM 4.23.22.8.2, Review of Protests.
- (3) The protest should be returned to the taxpayer if it does not comply with the requirements as outlined in Publication 5 and additional time should be granted to perfect the protest. Use Letter 1025-P, Letter of Protest – Employment Tax, or Letter 1025-A, Letter of Protest (Claims), for this purpose.
- (4) If a rebuttal is not prepared, when closing the case to Appeals, the examiner must prepare Letter 2280, Transfer to Appeals, to notify the taxpayer the case is being closed to Appeals. The letter must be signed by the group manager, and mailed to the taxpayer.

4.23.22.8.2
(05-16-2018)

Review of Protests

- (1) A taxpayer's protest generally will be reviewed at the group level, as designated by management, within seven calendar days of receipt to determine whether:
 - a. The protest is adequate,
 - b. The case requires further development by the examiner, and
 - c. The examiner's report should be modified.

See IRM 4.10.8.12.9.3, Request for Appeals Conference (SB/SE Field and Office Examiners only), for information on small case requests and formal protests.
- (2) For formal protests, determine whether the taxpayer's written protest includes the following required elements:
 - a. A statement that the taxpayer wants to appeal the findings of the examiner to the Appeals,
 - b. The taxpayer's name and address,
 - c. The date and symbols from the letter transmitting the proposed adjustments and findings being protested,
 - d. The tax periods or years involved,
 - e. An itemized schedule of the adjustments with which the taxpayer does not agree,
 - f. A statement of facts supporting the taxpayer's position on any contested factual issue,
 - g. A statement outlining the law or other authority upon which the taxpayer is relying, and
 - h. A declaration of truth under penalties of perjury.
- (3) After review of the protest, the examiner should prepare a rebuttal to address or clarify any new facts presented or arguments made by the taxpayer. This rebuttal will serve to supplement the information contained within the examiner's report and offer a constructive response to the taxpayer's arguments that were presented in the protest. If a rebuttal is prepared, a copy must be provided to the taxpayer. Examiners should use Letter 5072, Examiner's Rebuttal, for this purpose.

- (4) The taxpayer should be given the opportunity to meet with the examiner's manager to attempt to resolve the unagreed issues. If the disagreements cannot be resolved at the manager's conference or the taxpayer declines to meet, the entire case should be transferred to Appeals.
- (5) If a protest concerning a non-IRC 7436 issue raises a worker classification or section 530 argument, then the issue will become an IRC 7436 issue. If this occurs, all procedures and reports for IRC 7436 issues must be followed with regard to the issue, including using the proper waiver forms, and addressing section 530, IRC 3509 rates, and CSP.
- (6) For additional information, see IRM 4.10.8.12, Unagreed Case Procedures (SB/SE Field and Office Examiners Only) or IRM 4.10.8.13, Unagreed Case Procedures: Preliminary (30-Day) Letters (LB&I Examiners only).

4.23.22.8.3
(05-16-2018)
**Follow-Up to 30-Day
Letters**

- (1) If the taxpayer does not file a small case request or formal written protest within the time allowed, but indicated their intent to do so, examiners should issue:
 - a. Letter 923-P, Letter Extending Time to File Protest – Employment Tax, or
 - b. Letter 923-C, Letter Extending Time to File Protest (Claim).

Note: Letter 923-P or Letter 923-C is sent to the taxpayer as a reminder to file a protest. Letter 923-P or Letter 923-C should be issued no later than seven calendar days after expiration of the original 30-day letter.

Reminder: Tax Compliance Officers (TCO) will update the case file using ERCS action code "07".

- (2) If the 30-day letter is returned as undeliverable, an attempt must be made to obtain the correct address (see IRM 4.10.2.8.4, Undeliverable Initial Contact Letters).
 - a. If the taxpayer's correct address is determined, the 30-day letter will be mailed to the new address. The period in which the taxpayer may reply starts with the date the letter was mailed to the new address.
 - b. If the taxpayer's correct address cannot be determined, then the case will be processed as outlined in IRM 4.23.22.8.6, No Response to 30-Day Letter.
- (3) If the taxpayer doesn't respond to the 30-day letter and the 30-day letter proposes an overassessment or disallowance of a claim with no change in tax liability, no follow-up action should be taken. The case should be closed as outlined in IRM 4.23.22.8.6(4) or (5).
- (4) If no response to a follow-up letter is received, the case will be processed as outlined in IRM 4.23.22.8.6, No Response to 30-Day Letter.

4.23.22.8.4
(05-16-2018)
**Additional Information
Received**

- (1) If the taxpayer provides additional information after a 30-day letter has been issued, the examiner should evaluate the information.
- (2) If there is no change to the examination report, or the corrected report reduces the previous report and no new issues are raised, solicit an agreement by sending one of the following:

- Letter 692-D, Request for Consideration of Additional Findings (IRC 7436 Cases),
- Letter 692-F, Request for Consideration of Additional Findings (Non-IRC 7436 Cases),
- Letter 692-G, Request for Consideration of Additional Findings (Claim – IRC 7436 Cases), or
- Letter 692-I, Request for Consideration of Additional Findings (Claim – Non-IRC 7436 Cases).

Allow the taxpayer 15 days to respond. A new 30-day letter is not needed. TCOs will update the case using ERCS action code “07”.

- (3) If the corrected report raises new issue(s) or the proposed deficiency is increased, a new 30-day letter must be issued, if sufficient time remains on the statute of limitations. If sufficient time does not remain on the statute of limitations, follow the instructions in IRM 4.23.22.7, Unagreed Case Procedures – Insufficient Time Remaining on Statute of Limitations.

Note: If the examination report changes as a result of the additional information, follow the corrected report procedures in IRM 4.23.10.10.4.1, Revised and Corrected Reports.

4.23.22.8.5
(05-16-2018)
**Full or Partial
Agreement**

- (1) If a signed agreement form is received in response to the 30-day letter, the case will be closed from the group within 20 days from the date the agreement or full payment is received using agreed case closing procedures. See:
- IRM 4.23.10.2, General Case Closing Guidelines and Time Frames,
 - IRM 4.23.10.6, Notification Letters in Agreed Cases, and
 - IRM 4.23.10.14, Agreed Employment Tax Reports
- (2) If the taxpayer indicates agreement to part of the report, solicit a partial agreement. If a partial agreement is received, process according to the procedures in IRM 4.23.10.15 , Partially Agreed Cases.

4.23.22.8.6
(01-08-2021)
**No Response to 30-Day
Letter**

- (1) Cases must be closed from the group within 20 days after the expiration of the time (including extensions) allowed to file a protest.
- (2) If the taxpayer does not file a protest letter seeking review by Appeals, the proposed tax involving IRC 7436 issues may not be assessed. Instead, upon expiration of the 30-day period, the taxpayer **must** be issued Letter 3523 , Notice of Employment Tax Determination Under IRC Section 7436. This suspends the statute of limitations for employment taxes dependent on the IRC 7436 issues. The examiner must close the case to Technical Services for issuance of Letter 3523. Follow procedures in IRM 4.23.22.11, Special Procedures for Letter 3523 Under IRC 7436.
- (3) If the taxpayer does not respond to proposed adjustments involving **only** non-IRC 7436 issues, the case should be closed unagreed promptly for tax assessment after the 30-day suspense period (including extensions) has expired.
- (4) If the taxpayer does not respond to proposed adjustments in a case involving both IRC 7436 issues and non-IRC 7436 issues, follow the quick/partial assessment procedures for the non-IRC 7436 issues before closing the case.

See IRM 4.23.10.15.1, Partial Assessment/Quick Assessment Processing. This will ensure that the non-IRC 7436 issues are promptly assessed. For the IRC 7436 issues, follow the procedures in IRM 4.23.22.11.

Reminder: Since the IRC 7436 and non-IRC 7436 issues may be ultimately litigated in separate courts, examiners and group managers must ensure that all workpapers and documents related to all the issues are uploaded to the Issue Management System (IMS) or other electronic workpaper system. This will ensure that the documents will be available to both TEGEDC and the Department of Justice since only one physical case file is being prepared.

- (5) If the taxpayer fails to respond to a 30-day letter advising of a proposed over-assessment (adjustments that decrease the tax liability exceed the adjustments increasing the tax liability), the case will be closed out of the group to CCP for assessment of the overassessment.
- (6) If the taxpayer fails to respond to a 30-day letter advising them of a claim disallowance, a statutory notice of claim disallowance will be issued by Technical Services. If there is no change to the tax liability (neither a deficiency or over-assessment), or the claim is disallowed in part with a resulting overassessment, close the case and check the "Statutory Notice of Claim Disallowance – Letters 905 and 906" box under the "Forward to Technical Services" section on Form 3198. See IRM 4.23.13.3.4, Form 2297 and Form 3363.

Note: The group may need to consider extenuating circumstances, such as mailing delays or taxpayers who mail the request on day 30, etc.

4.23.22.8.7
(05-16-2018)
**Taxpayer Fails to Extend
Statute of Limitations**

- (1) If the taxpayer responds to Letter 5153-F or 5153-P but fails to sign a statute extension allowing for more than 365 days on the statute of limitations, examiners should follow the same procedures for a no response case in IRM 4.23.22.8.6, No Response to 30-Day Letter.

4.23.22.9
(05-16-2018)
**Extension of Time to
Respond**

- (1) In general, Statement of Procedural Rules 601.105(d)(1), does not provide for an extension of time to reply to a 30-day letter. However, as a matter of practice, extensions may be granted under reasonable circumstances.
- (2) Extensions are granted by the group manager or a designated management official. The taxpayer should be notified in writing of the extension and the specific extended response date. Letter 686, Extension of Time for Certain Actions, will be used for this purpose. Extensions are normally granted for no more than 30 days unless a specific reason supports additional time. See IRM 4.10.8.12.8, Extension of Time to Respond (SB/SE Field and Office Examiners only), for procedures.

4.23.22.10
(05-16-2018)
**Cases Returned from
Appeals**

- (1) Appeals will return cases to Exam in the following situations (not all-inclusive):
 - Missing protest
 - Inadequate protest (does not meet the requirements described in Publication 5)
 - Less than 365 days remaining on the statute of limitations
 - Taxpayer provides new information or evidence

- Taxpayer raises new issues not considered by Exam
- Contrary to IRS practice, the case is a reopening of a previously closed case as set forth in Rev. Proc. 2005-32
- The case involves claims for abatement of excise tax, employment tax, or trust fund recovery penalty which are not deemed meritorious by the IRS
- Appeals discovers potential fraud, malfeasance or misrepresentation of a material fact

See IRM 8.2.1.5, Returning a Case to Examination - ATE.

4.23.22.10.1
(05-16-2018)

Cases Returned from Appeals with New Information

- (1) In some instances, the taxpayer may provide new information or new evidence related to a disputed issue that the taxpayer did not previously share with the examiner. If the Appeals hearing officer believes the information merits additional analysis or investigative action by Examination, Appeals will release jurisdiction and return the case to the examiner to evaluate and make an audit determination. See IRM 4.10.8.12.11, Cases Returned from Appeals (SB/SE Field and Office Examiners Only), for procedures.

4.23.22.10.2
(05-16-2018)

Statute of Limitations on Cases Returned from Appeals

- (1) If the taxpayer raises a relevant new issue and there will be less than 210 days remaining on the statute of limitations when the originating function receives the case, Appeals will not return the case unless the taxpayer provides a consent to extend the statute of limitations. See IRM 8.6.1.7.4, Taxpayer Raises New Issue.
- (2) If Appeals previously released jurisdiction of the case and returned it to Examination for additional work, there must be at least 180 days remaining on the statute of limitations when the case is received in Appeals the second time. The group must allow a minimum of 30 days for shipping and processing a case through Technical Services. Therefore, 210 days must be remaining on the statute when the case is closed from the group.

4.23.22.10.3
(05-16-2018)

Undeveloped Cases

- (1) Appeals will **not** return cases to Examination when the case is not fully developed **and** the taxpayer has not presented new information or evidence. Instead, Appeals will attempt to settle the case on factual hazards. See IRM 4.2.1.8.1, Cases Not Fully Developed.

4.23.22.11
(05-16-2018)

Special Procedures for Letter 3523 under IRC 7436

- (1) IRC 7436(a) provides the Tax Court review rights concerning certain employment tax determinations. IRC 7436 only applies to employment tax cases in which the IRS determines that at least one worker should be reclassified as an employee and/or that the taxpayer is not entitled to relief under section 530 of the Revenue Act of 1978. The law requires that any employment tax that depends upon such determinations cannot be assessed unless the taxpayer has been given an opportunity to file a petition for Tax Court review of the Service's determinations on one or both of those two issues.

Note: Only one of the issues must be present for the Tax Court to have jurisdiction.

- (2) IRC 7436(a) also authorizes the Tax Court to determine the proper amount of employment tax and penalties (IRC sections 6651–6665) with respect to the determinations of worker classification and section 530 relief. See Publication 3953, Q & A's About Tax Court Proceedings for Determination of Employment

Status Under IRC 7436, for more information on IRC 7436, and IRM 4.23.5.3, Section 530 of the Revenue Act of 1978, for information on section 530.

- (3) IRC 7436(a) does not provide the Tax Court with authority to review any employment tax determinations other than the two listed in the statute:
 1. Review the Service's determination that one or more individuals performing services for the taxpayer are employees, and
 2. Review the IRS determination that the taxpayer is not entitled to relief under section 530(a) of the Revenue Act of 1978 with respect to those individuals, and

The Tax Court may also determine the proper amount of employment tax under the above determinations.

- (4) An examination that does not initially appear to involve an IRC 7436 issue can be identified as an IRC 7436 issue late in an examination, or even in Appeals. If there is uncertainty regarding whether an issue requires IRC 7436 procedures, Tax Exempt/Government Entities Division Counsel (TEGEDC) should be contacted.
- (5) For purposes of providing taxpayers with notice of its determinations on worker classification and section 530 relief, the IRS will utilize a Letter 3523, Notice of Employment Tax Determination under IRC Section 7436. Refer to Publication 3953 and IRM 4.23.5.2, IRC 7436, for additional information.
- (6) Letter 3523 is similar to a statutory notice of deficiency. **Technical Services will prepare, review, sign, and issue Letter 3523 and all attachments.** To assist in the preparation of Tables 1 and 2 of Letter 3523, the examiner will prepare a list of reclassified workers as defined in IRM 4.23.22.11.1, General Overview of Section 7436 Procedures, (5) and (6). In addition, examiners should prepare a work copy draft of Tables 3 and 4 to assist Technical Review in the preparation of Letter 3523. Both the list of workers and the table of taxes should be included with the Employment Tax Examiner's Report (ETER) package in the front of the case file for use by Technical Services in preparation of the Letter 3523.

Note: To assist Technical Services on preparing Letter 3523, it is recommended that examiners include the ETER spreadsheet and associated workpapers in electronic format, and include in the file when closing. See (3) in IRM 4.23.10.19.2, Assembly of Employment Tax Case File Folder - SB/SE, for instructions on case file enclosure.

- (7) In the future, Letter 3523 may be revised in response to statutory amendments, court opinions, and feedback from IRS employees and the public. Employees should use the Letter 3523 on the Form/Pubs/Products Repository page on the IRWeb to ensure use of the most current version. IRS employees must **NOT** make changes to the language of the Letter 3523.

4.23.22.11.1
(01-08-2021)

**General Overview of
Section 7436 Procedures**

- (1) In most IRC 7436 cases, a taxpayer who is issued a Letter 3523 will have previously received a "30-day letter," which is sent to taxpayers in unagreed examination cases. If the taxpayer does not respond to the 30-day letter by agreeing to the proposed adjustments or by filing a protest to Appeals, the taxpayer is sent Letter 3523 for IRC 7436 issues by Technical Services. If the taxpayer files a protest to Appeals and the IRC 7436 issues are not settled in

Appeals, the taxpayer will be sent Letter 3523 by Appeals. After the IRS sends Letter 3523, the taxpayer may file a petition with the Tax Court for review of the IRC 7436 issues.

- (2) Tax Court Rule 34(b)(8) requires that the petition shall include a copy of Letter 3523 and all relevant enclosures, as listed in (3) below. Thus, if a case goes to the Tax Court, the explanatory paragraphs become a part of the basic pleadings for the Commissioner. They set the pattern upon which the Government's case may be tried, and care must be exercised in the statement of grounds for the determination of the asserted liability. For this reason, do not enclose a copy of the Form 886-A, Explanation of Items, with Letter 3523.
- (3) **Enclosures with Letter 3523:** Every Letter 3523 should have the following enclosures:
 - Form 2504–T, Agreement to Assessment and Collection of Additional Tax and Acceptance of Overassessment (Employment Tax Adjustments Subject to IRC 7436),
 - Form 4666, Summary of Employment Tax Examination,
 - Form 4667, Examination Changes – Federal Unemployment Tax,
 - Form 4668, Employment Tax Examination Changes Report,
 - Any schedules of computations for the proposed assessment (such as penalty schedules), and
 - Publication 3953, Q & A's About Tax Court Proceedings for Determination of Employment Status Under IRC 7436.

Reminder: Form 886-A should not be enclosed with Letter 3523; the explanation of adjustment is already included in the body of Letter 3523.

- (4) **Taxpayer Notification:** Letter 3523 advises the taxpayers of the opportunity to seek Tax Court review and provides information on how to do so. Publication 3953 contains additional information and should always be sent to the taxpayer as an enclosure with the Letter 3523. Letter 3523 and Publication 3953 also advise taxpayers of the right to contact a Taxpayer Advocate.
- (5) **Names of Reclassified Workers:** Table 1 of the Letter 3523 must be completed to identify the workers the IRS has determined should be classified as employees. A Letter 3523 that does not contain either the names of all the workers or the job categories may result in Tax Court procedural issues. If some or all of the names of the workers are unknown, job categories may be used (i.e., janitors, instructors). Examiners should include the names of each reclassified worker in Table 1 to the extent they are known.
 - a. Table 1 on page 2 of the Letter 3523 is used by examiners to list the reclassified workers' names and to mark (**using an "x" or "✓"**) the quarters for which the workers are being reclassified. **Do not list dollar amounts in Table 1.**
 - b. If there is confusion among similarly named individuals or if names are not available, examiners should provide the job description of the workers and make sure that an attachment to the Letter 3523 explains what steps were taken to obtain the names and why the names were unavailable. Examples of identifying information include the shift worked, the specific job performed, etc.
 - c. The use of SSNs for identification of workers is **not allowed** on a Letter 3523.

- d. The examiner will place an “X” in the Calendar Year column to indicate the reclassified wages are subject to FUTA.
- (6) **Names of Workers for IRC 7436 Wage Issues:** Table 2 of the Letter 3523 must be completed to identify the workers who received additional wages where the issue has been determined to be an IRC 7436 wage issue. A Letter 3523 that does not contain either the names of all the workers or the job categories may result in Tax Court procedural issues. If some or all of the names of the workers are unknown, job categories may be used (i.e., janitors, instructors). Examiners should include the names of each reclassified worker in Table 1 to the extent they are known.
- a. Table 2 on page 3 of the Letter 3523 is used by examiners to list the workers’ names and to mark (**using an “x” or “√”**) the quarters for which the workers received additional compensation. **Do not list dollar amounts in Table 2.**
 - b. If there is confusion among similarly named individuals or if names are not available, examiners should provide the job description of the workers. A workpaper should explain what steps were taken to obtain the names and why the names were unavailable. Examples of identifying information include the shift worked, the specific job performed, etc.
 - c. The use of SSNs for identification of workers is **not allowed** on a Letter 3523.
 - d. The examiner will place an “X” in the Calendar Year column to indicate the reclassified wages are subject to FUTA.
- (7) **Amount of Tax:** Table 3 of the Letter 3523 must include the IRS determination of the proper amount of employment tax, additions to tax, and/or penalties that arise from treating the workers listed in Table 1 as employees. Table 4 of Letter 3523 must include the IRS determination of the proper amount of employment tax, additions to tax, and/or penalties that arise from treating the workers listed in Table 2 as employees:
- a. The information about the proposed employment tax assessment must be moved from the attachments (Form 4667 and/or Form 4668) to Table 3 and/or Table 4 of the Letter 3523.
 - b. The amounts must be organized by type of employment tax (Old Age, Survivor & Disability Insurance, Hospital Insurance, Additional Medicare Tax, Income Tax Withholding and FUTA) rather than by type of return and listed separately for each period (quarter or year for annual returns).
 - c. The total FUTA tax will be reported in the December 31 period.
 - d. Copies of Forms 4666, 4667, and 4668 must be attached to the Letter 3523 to show the taxpayer which rates were used in calculating the employment taxes.
- (8) **Form 2504–T:** A Form 2504–T **must** be included as an attachment with Letter 3523 to provide the taxpayer with an opportunity to agree to the proposed employment tax adjustment. The Form 2504–T contains a statement whereby taxpayers waive restrictions on assessments under IRC 7436(d) and IRC 6213(a), as a taxpayer must be informed that Tax Court review is not available for agreed cases. A Tax Court review can only be sought if there is a controversy with respect to the proper amount of tax under the determinations of worker classification and/or section 530 issues, i.e., an unagreed case.
- (9) **Last Day to File a Tax Court Petition:** On the front page of Letter 3523, the IRS will provide the taxpayer with the date that represents the last day on

which a timely Tax Court petition may be filed by the taxpayer. A taxpayer must file its petition with the Tax Court before the 91st day after the date the Letter 3523 was mailed to the taxpayer by certified or registered mail. That means that the last day on which a timely Tax Court petition may be filed by the taxpayer is the 90th day after the date the Letter 3523 is mailed by certified or registered mail. If, however, that 90th day falls on a Saturday, Sunday, or legal holiday in the District of Columbia, the last day to file a petition is the next day which is not a Saturday, Sunday, or legal holiday in the District of Columbia. See IRC 7503 and Pub 15, (Circular E) Employer's Tax Guide.

Example: If the Letter 3523 is mailed on Wednesday January 26, 2020, the last day for taxpayer to file a timely Tax Court petition is calculated as follows: The Julian date for January 26, 2020, is 26 (that is, it is the 26th day of the year). Add 90 to the Julian date (26) to obtain the Julian date 90 days after the petition is mailed (116). Since the 116th day of the year (April 25, 2020) falls on a Saturday, the last day to file a petition will be the next day that is not a Saturday, Sunday, or legal holiday in the District of Columbia. The following Monday, April 27, 2020, is not a legal holiday in the District of Columbia. Thus, the last day for a taxpayer to file a timely Tax Court petition with respect to a Letter 3523 mailed by certified or registered mail on January 26, 2020, is Monday, April 27, 2020.

- (10) **Erroneous Assessment:** If the IRS erroneously makes an assessment of taxes attributable to any IRC 7436 issues without issuing a Letter 3523 or obtaining a waiver of restrictions on assessment (e.g., Form 2504–T) from the taxpayer, the taxpayer is entitled to an automatic reversal of the assessment. However, once any such procedural defects are corrected, the IRS may reassess the employment taxes if the statutory period of limitations for assessment has not expired.
- (11) **Period of limitation:** Mailing of the Letter 3523 by certified or registered mail will suspend the period of limitation only for assessment of the employment taxes that are dependent upon the IRC 7436 issues. The restrictions on assessment in IRC 7436(d) and IRC 6213(a) and the suspension of the limitations period for assessment in IRC 6503(a) generally apply in the same manner as if a notice of deficiency had been issued. Thus, the period is suspended for the 90-day period during which the taxpayer can begin a suit in Tax Court plus an additional 60 days thereafter. If the taxpayer does file a suit, the period of limitation for assessment will be suspended during the Tax Court proceedings and for 60 days after a final court decision. To ensure that no assessment is made during the 90-day period following mailing of the Letter 3523, follow the same suspense procedures that apply after a statutory notice of deficiency is issued.
- a. The statute of limitations for assessment of employment taxes with respect to non-7436 issues is not suspended. Thus, the examiner should solicit consents from the taxpayer to extend the limitations period for assessment with respect to employment taxes that are **not IRC 7436** issues, or assess those taxes using the normal procedures.
 - b. For purposes of suspending the period of limitations **only**, backup withholding (BWH) with respect to workers included in the reclassification may be considered dependent upon the worker classification and section 530 issues. There is the possibility that an employer might ultimately be liable for BWH with respect to those workers if the Tax Court disagrees

with the IRS determination (i.e., the Letter 3523) and rules that the individuals are not employees. Therefore, assuming the statute of limitations on assessment of BWH taxes has not already expired, the mailing of a Letter 3523 by certified or registered mail could also suspend the running of the period of limitations for purposes of asserting backup withholding with regard to such individuals while the Tax Court's determination under IRC 7436 is pending. However, the Tax Court does **not** have jurisdiction over backup withholding. As a result, the examiner should treat the BWH issue as independent and seek a consent to extend the limitations period for assessment. Regardless of whether or not a consent was secured, the examiner must immediately assess the backup withholding and suspend collection until after the Tax Court proceeding is concluded.

- c. If there are other issues involved not relating to IRC 7436 and the taxpayer agrees with those adjustments, the examiner should secure a "partial agreement" and have the agreed taxes for those issues assessed. See IRM 4.23.10.15.1, Partial Assessment / Quick Assessment Processing, for the procedure for partially agreed cases.
- (12) **Effect on Refund Litigation:** The taxpayer may file a refund suit in District Court or Court of Federal Claims to contest the IRS employment tax determinations (including worker classification and section 530) as an alternative to filing a Tax Court petition. The District Court or Court of Federal Claims do not have jurisdiction over worker classification or section 530 issues unless the taxpayer has paid the employment tax assessment attributable to at least one employee for any one period, has filed a claim for refund, and brings the suit within the period of the limitation under IRC 6532. If the taxpayer contests the worker classification/section 530 issues or other employment tax issues in Tax Court, the Tax Court only has jurisdiction over IRC 7436 issues and may not consider other employment tax issues. If the taxpayer contests the worker classification or section 530 issues in Tax Court, there is nothing to preclude the taxpayer from later filing a refund suit in District Court or Court of Federal Claims with respect to other issues that were not previously considered by the Tax Court, assuming the taxpayer has satisfied the jurisdictional prerequisites. However, the taxpayer may not litigate worker classification and section 530 for the same tax periods in the Tax Court and in the refund suit.
- (13) **Interest-Free Adjustments:** The taxpayer is not eligible for interest-free adjustments after receipt of notice and demand for payment or after receipt of a Letter 3523. The taxpayer may make a deposit to stop the accrual of any interest. See IRM 4.23.8.3, Interest-Free Adjustments - In General, for more information on interest-free adjustments.
- (14) **Effect on Self-Employment Taxes:** If a taxpayer files a suit in Tax Court concerning the worker classification and/or section 530 relief, the statute of limitations for its workers to file claims for refund for self-employment (SECA) taxes is extended until the last day of the second year after the calendar year in which such Tax Court determination becomes final. See IRC 6511(d)(7).

4.23.22.11.2
(05-16-2018)
**Prompt Issuance of
Letter 3523**

- (1) Letter 3523 in field examination cases will generally be issued by Technical Services within 60 days after the expiration of the 30-day period specified in the 30-day letter or any extensions. In office examination cases, notices will generally be issued within 45 days of receipt by Technical Services.
- (2) If a Letter 3523 is based on an examination of a retained copy of the taxpayer's return, the Letter 3523 will be issued by Technical Services without

securing the original return. A transcript (BMFOLT) must be obtained to insure that the tax shown on the retained copy is the same amount as the tax assessed on the return.

- (3) Technical Services will review the case to the extent needed to prepare a proper Letter 3523.

4.23.22.11.3
(05-16-2018)

Authority for Issuance

- (1) Under IRC 7436, if, in connection with an audit of any person, there is an actual controversy involving a determination by the Secretary as part of an examination that:

- a. One or more individuals performing services for such person are employees of such person for purposes of subtitle C, or
- b. Such person is not entitled to the treatment under subsection (a) of section 530 of the Revenue Act of 1978 with respect to such an individual,

the Commissioner is authorized to send a Letter 3523 to such person. The IRS will issue a Letter 3523 only after the IRS has determined:

- That the taxpayer is not entitled to section 530 relief, or
- That one or more individuals performing services for the taxpayer are employees for purposes of subtitle C.

The amount of employment tax under those determinations will also be set forth in the Letter 3523.

- (2) The Territory Manager for Technical Services and other designated officers are specifically authorized to prepare, sign, and mail the statutory Letter 3523 (see Delegation Order 4-26, Authority to Issue and Execute Notices of Determination Concerning Worker Classification under IRC 7436, formerly Delegation Order No. 251) on behalf of the Commissioner. The Letter 3523 may be issued at any time if it appears that the taxpayer is seeking merely to prolong consideration and to postpone final action by dilatory tactics or by raising frivolous issues.

4.23.22.11.3.1
(05-16-2018)

**Signature Requirements
for Delegates Listed in
Delegation Order 4-26**

- (1) Delegates who are listed in Delegation Order 4-26 as having authority to issue a Letter 3523 will either:

- a. Manually sign the name of the approving official followed by the delegate's initials, or
- b. Imprint the name of approving official by use of a signature stamp followed by the delegate's initials and manually sign their own name, or
- c. Imprint their signature and title by use of a rubber stamp, or
- d. Affix an electronic signature.

- (2) Signature stamps will be procured locally and only the delegates will be permitted to use the stamps. To prevent unauthorized use, signature stamps will be protected in accordance with the procedures found in IRM 1.4.6, Resource Guide for Managers - Managers Security Handbook. For additional information on signature requirements of a statutory notice, see *Tavano v. Commissioner*, 986 F.2d 1389 (11th Cir. 1993).

4.23.22.11.3.2
(01-08-2021)

**Signature Requirements
when Campus Director
Redelegates Authority**

- (1) Delegates redelegated the authority by the Campus Director to sign a Letter 3523 will:
 - a. Manually sign the Director's name followed by the delegate's initials,
 - b. Imprint the Director's name by use of a signature stamp followed by the delegate's initials, or
 - c. Arrange for the machine imprinting of the Director's signature on the Letter 3523.

Note: Signed Letter 3523 will be associated with the respective case files for review and further processing.

- (2) Delegates who are listed in Delegation Order No. 4-26 will either:
 - a. Manually sign their own name, or
 - b. Imprint their signature and title by use of a rubber stamp, or
 - c. Affix an electronic signature.
- (3) Letter 3523 signed by use of a "facsimile signature plate" will be controlled as follows:
 - a. Completed Letter 3523, Form 2504-T, and computerized certified mail list will be returned to the delegate who is responsible for signing the Letter 3523.
 - b. Arrange for the machine imprinting of his/her signature on the Letter 3523.
 - c. Signed Letter 3523 will be associated with the respective case files for review and further processing.
 - d. Hand-stamp the following statement on the computerized certified mailing: "Notices listed hereon were issued by: (Manual Signature)".
- (4) The signed certified mailing lists and delegation orders will be disposed of in accordance with the disposal authority granted by the Archivist of the United States which will be included in Items 3 and 38 of Records Control Schedule 206. This requirement provides proof of the delegated authority and the fact that the person having the delegated authority did, in fact, cause the signature to be affixed should the validity of the Letter 3523 be questioned.
- (5) Signature stamps and facsimile signature plates, when not in use, will be protected from unauthorized use in accordance with IRM 1.4.6.

4.23.22.11.3.3
(05-16-2018)

Disposition of Copies

- (1) Letter 3523 and attached explanatory statements will generally be prepared in duplicate. The original and copies are distributed as follows:
 - a. The original (including all statements and attachments) will be transmitted to the taxpayer by certified or registered mail, and
 - b. A copy is kept in the case file as evidence that the Letter 3523 was sent to the taxpayer. See *Pietanza*, 92 T.C. 729 (1989). The file is then retained by the issuing office pending ultimate disposition.

See IRM 4.8.10.8, Disposition of Copies.

- (2) If the taxpayer is represented by an attorney or agent, an additional copy of the Letter 3523 should be prepared for transmittal to such attorney or agent.

- (3) If the Letter 3523 contains more than one taxable period and the Power of Attorney does not specify all of the same periods, the Letter 3523 should not be sent to the representative. Rather, an additional copy of the Letter 3523 should be sent to the taxpayer with an explanation as to why a copy cannot be sent directly to the representative. Letter 4368-A, Statutory Notice Not Sent to Representative - Tax Periods Not Specified - Employment Tax, should be included with the Letter 3523 mailed to the taxpayer. The letter instructs the taxpayer to provide their representative a copy.

4.23.22.11.4
(05-16-2018)
**Period for Filing
Petitions if Letter 3523 is
Addressed to Taxpayer
Outside the United
States**

- (1) IRC 7436(d)(1) provides that the principles of IRC 6213(a) apply to proceedings brought under IRC 7436 as if the IRC 7436 determination were a notice of deficiency. Thus, if a Letter 3523 is addressed to a taxpayer outside the United States, the taxpayer has 150 days after the mailing in which to file a petition with the Tax Court.

4.23.22.11.5
(05-16-2018)
**Protests,
Correspondence and
Waivers Received After
Issuance of a Letter
3523**

- (1) Letter 556-A, Acknowledgement of Protests, Correspondence and Requests for Interviews - Employment Tax, may be used to acknowledge receipt of protests, correspondence, and requests for interview or conference received after the issuance of a Letter 3523.
- (2) Following acknowledgment, the protest, correspondence, or request will be transmitted with the administrative file (or a statement of the pertinent facts if the files are extremely bulky) to the area Appeals office which serves the area responsible for the Letter 3523.
- (3) Examination control records will be kept open pending either the return of the files or notification that Appeals will consider the case during the 90-day period. The foregoing will not apply if the Letter 3523 contains an obvious error of omission or commission and if correction will properly reflect the position of the IRS and permit an immediate closing of the case. Neither will it apply to a case in which Appeals has waived jurisdiction. See IRM 4.23.22.11.6, Appeals Refusal of Jurisdiction in Non-Docketed IRC 7436 Cases, for procedures.
- (4) If, during the 90-day period, the taxpayer executes a Form 2504-T to waive the restrictions on assessment and collection of the employment tax adjustments proposed in Letter 3523 in full, associate all employment tax issues independent of those in the Letter 3523 and transmit immediately to the Campus for assessment of the proposed adjustment of employment taxes.
- (5) If, during the 90-day period, the taxpayer executes a Form 2504-T to waive the restrictions on the assessment and collection of the employment tax adjustments proposed in the Letter 3523 in part, Examination will transmit the waiver and the return or returns which may be involved to the Campus for assessment of the agreed portion of the proposed adjustment of employment taxes as a partial agreement.
- (6) After necessary action in this latter case, the waiver and the return(s) will be returned for restoration to the file of the case. If the file was transmitted to Appeals during this time period, the waiver and the return(s) should also be transmitted to Appeals upon receipt by Examination.
- (7) When answering questions from taxpayers or representatives on a Letter 3523, the data should be taken from the administrative file rather than referring to

AIMS. See IRM 4.23.22.11.6, Appeals Refusal of Jurisdiction in Non-Docketed IRC 7436 Cases, for procedures on preparing a revised examination report based on additional information received after the issuance of the Letter 3523.

4.23.22.11.6
(05-16-2018)

**Appeals Refusal of
Jurisdiction in
Non-Docketed IRC 7436
Cases**

- (1) Delegation Order 8-8 (Rev. 1), "Authority of Appeals in Protested and Tax Court Cases", authorizes Appeals to settle certain protested cases. The Appeals Area Director has the authority to refuse jurisdiction of any case not docketed in the Tax Court in which a Letter 3523 was issued by the originating office and the taxpayer requests Appeals' consideration. Situations arising in this area during the 90-day period for a Compliance-issued Letter 3523 should be coordinated with Appeals on a case-by-case basis. Likewise, the Appeals Area Director will coordinate with the Compliance Area Director during the 90-day period for a similar situation where Appeals issued Letter 3523. For general procedures involving Appeals consideration post issuance of a statutory notice, see IRM 8.2.2.2, Appeals Jurisdiction on a Compliance Issued Statutory Notice of Deficiency (SND).
- (2) When issued, the refusal of jurisdiction operates to vest in the issuing office complete jurisdiction of the case during the 90-day period, including the authority to transfer the case to another area. See IRM 4.8.10.9.3.2, Correspondence Received, for procedures when the taxpayer submits correspondence during the 90-day period.

4.23.22.11.7
(05-16-2018)

Notice of Petitions Filed

- (1) To ensure timely information is provided to determine whether a petition has been filed within the prescribed time in Letter 3523 cases, Chief Counsel's office furnishes a daily list of newly-docketed Tax Court cases. The docket list reflects the following information:
 - Docket number,
 - Name and address of petitioner,
 - TIN (if known),
 - Name of office issuing the Letter 3523, and
 - Date of the Letter 3523.
- (2) It will be the responsibility of the designated office, by reference to the above docket list, to take the necessary action to ensure that assessment of the proposed adjustment of employment taxes on any defaulted Letter 3523 is made within the statutory period. For any case for which the Area or Campus issued the notice which does not appear on the docketed cases list during the 90-day period (plus an additional period of 30 days, if needed), the case will be transmitted immediately for assessment of the proposed adjustment of employment taxes.
- (3) Any such case in which a timely petition has been filed should be transmitted within 10 calendar days using Form 3210, Document Transmittal, by Technical Services to the Appeals office servicing the Area or Campus making the determination of tax liability. In unusual cases, the reason(s) for failure to meet the deadline will be documented.
- (4) A dummy case file will be assembled by Technical Services and should contain the required number of copies (usually four) of the Letter 3523 and statement. If an untimely petition appears to have been filed (for this purpose field offices should assume that the petition was filed approximately three days prior to its appearance on a docketed cases list), the dummy case file should be

forwarded to Appeals containing information to show the exact date on which the Letter 3523 was presented for mailing. All questions, including those relating to petitioned tax periods, should be referred to TEGEDC.

- 4.23.22.11.8
(01-08-2021)
Letter 3523 Transferee, Bankruptcy and Receivership Cases
- (1) Special instructions relating to the preparation of Letter 3523 involving tax liability of transferees under IRC 6901, as well as the preparation of letters involving bankruptcy and receivership cases, can be found in IRM 4.27.1, Bankruptcy - Examiner Responsibilities and Procedures.
 - (2) If the taxpayer is a debtor in bankruptcy, the automatic stay provision in 11 U.S.C. 362(a)(8) precludes “the commencement or continuation of a proceeding before the United States Tax Court” for a taxable period the bankruptcy court may determine in the case of a corporate debtor and for a pre-petition tax period in the case of an individual debtor. If section 362(a)(8) of the automatic stay applies, the taxpayer may not file a petition in Tax Court while the stay remains in effect. Publication 3953, Q & A’s About Tax Court Proceedings for Determination of Employment Status Under IRC 7436, contains language advising the taxpayer of this fact. However, the Service is permitted to issue Letter 3523 while the automatic stay is in effect and should do so to prevent expiration of the statute of limitations on assessment, which continues to run during the bankruptcy proceeding.
- 4.23.22.11.9
(05-16-2018)
Letter 3523 on Assessment in Jeopardy
- (1) All jeopardy assessments for employment taxes have the common characteristic that collection will be endangered if regular assessment and collection procedures are followed. Jeopardy assessments should be used prudently and care should be taken to avoid excessive and unreasonable assessments.
 - (2) All examiners should be alert for conditions, as set forth in IRM 1.2.1.5.27, Policy Statement 4-88 (Formerly P-4-86), “Jeopardy assessments to be used sparingly and assessment to be reasonable in amount,” where a jeopardy assessment may be necessary to protect the government’s interest. It is important to note that the conditions set forth in the policy statement must exist for a jeopardy assessment to be considered.
- 4.23.22.11.10
(05-16-2018)
Precautions Against Expiration of Period of Limitations for Assessment
- (1) All examiners responsible for disposition of cases at any stage will take every precaution to protect the government’s interest relative to the expiration of the statutory period of limitations for assessment. Refer to IRM 25.6.22, Extension of Assessment Statute of Limitations By Consent.
 - (2) Cases closed to Appeals (including reference returns where the period for assessment requires protection) require at least 365 days on the statute of limitations when they are received in Appeals. If insufficient time remains on the statute of limitations and an appropriate and a timely consent to extend the statute was not secured by the examiner, the case will be closed to:
 - Technical Services to issue Letter 3523 (for IRC 7436 issues), or
 - CCP for immediate assessment of the proposed adjustment (for non-IRC 7436 issues).

See IRM 8.2.1.4, Receipt of New Assignment by an Appeals Technical Employee (ATE).
 - (3) For purposes of employment tax case processing, examiners should be aware of the 365-day requirement and plan accordingly when issuing a 30-Day Letter. Examiners should allow 30 days for shipping and processing a case through

Technical Services before being sent to Appeals. This would then require at least 395 days remaining on the statute when closed from the group (IRM 4.10.8.12.1, 30-Day Letters (SB/SE Field and Office Examiners Only)) and 425 days (365+30+30) on the statute when issuing the 30-Day Letter. Examiners should also account for time needed to review the protest, prepare any rebuttal, and close the case from the group.

- (4) Letter 3523 may be issued before referring a case to Appeals if it is determined that acceptance of a Form SS-10, Consent to Extend the Time to Assess Employment Taxes, will be injurious to the government's interests because of IRC 6511(c)(1). Alternatively, area officials may take any other appropriate action to protect the government's interests before accepting the consent and referring the case to Appeals.
- (5) If the examiner believes a jeopardy assessment is appropriate, contact TEGEDC.

4.23.22.11.11
(05-16-2018)
**Letter 3523 on
Electronically Filed
Returns**

- (1) Examination personnel should follow normal closing procedures even though the return is electronically filed, including issuance of the Letter 3523.

4.23.22.11.12
(05-16-2018)
Mailing of Letter 3523

- (1) Letter 3523 will be sent by certified mail to the last known address of the taxpayer. Registered mail will be used when the address of the taxpayer is outside the United States. The notice is intended to furnish legal notice of the Secretary's determination to the taxpayer liable for the payment of the tax. It is therefore necessary that notices be issued in compliance with the provisions of the statute.
- (2) Letter 3523 may be held invalid if it is not addressed to the proper taxpayer or is mailed to the wrong address. Therefore, it is very important that the correct last known address of the taxpayer be secured when a Letter 3523 is being sent.
- (3) Be very careful in determining the address to be used; a thorough search of the administrative file should be made. Unless the taxpayer has clearly and concisely notified the IRS of a change of address, the address on the most recently filed (and reasonably processed) tax return is the last known address of the taxpayer.

It is imperative to search beyond the administrative file for a last known address if:

The Letter 3523 will be issued without any contact between the taxpayer and the IRS, or

The last contact from the taxpayer disclosed by the administrative file occurred more than 90 days prior to the date the Letter 3523 will be issued, or

The remaining time on the statute of limitations for assessment is less than 60 days.

Note: The last known address can also be the address provided through the National Change of Address (NCOA) program. See IRM 5.1.18.11, United States Postal Service.

- (4) A check of the Master File must be made by Taxpayer Identification Number (TIN), which is generally the employer identification number (EIN). The taxpayer's EIN and SSN should be researched for sole proprietors. Research the address using CC INOLE. If there is any doubt as to what constitutes the last known address of the taxpayer, duplicate original Letter 3523 should be sent by certified mail to each known address.
- (5) Other IDRS command codes should be utilized only if adequate computer research is provided and as necessary to secure the correct last known address for the taxpayer. For instance, CC INOLE does not show when an address was input into the computer records. However, CC TXMOD will show pending transactions.
- (6) Copies of all IRS computer searches should be retained in the administrative file.
- (7) If Letter 3523 is returned to the issuing office because of an incorrect address, it will be re-mailed to the correct address by certified mail.

4.23.22.11.13

(05-16-2018)

**Records of Mailing
Letter 3523**

- (1) At times, questions arise as to the date on which the Letter 3523 is mailed. The burden of proof in establishing the date is on the Commissioner. Accordingly, it is necessary that a record be maintained by each issuing office showing the date on which the Letter 3523 was sent by certified or registered mail.
- (2) It is important that employees in each office, responsible for the recording and sending of certified mail, are fully informed as to the applicable regulations of the postal service.
- (3) The record of certified mailing of Letter 3523 should be kept on Postal Service Form 3877 (P.S. Form 3877), which is supplied in booklet form by the U.S. Postal Service. These books, together with a series of certified numbers, may be obtained from the local postmaster (or through the USPS web site at <https://about.usps.com/forms/ps3877.pdf>, provided an average of three or more letters are mailed at one time. In the interest of legibility it is preferable that P.S. Form 3877 be removed from the book and the information entered thereon be typewritten. The following heading will be typed or imprinted by rubber stamp across the first line of each page of P.S. Form 3877: "Letter 3523, for the years indicated, has been sent to the following taxpayers."
- (4) A rubber stamp with "CERTIFIED MAIL" indicated, will be used by the designated IRS employee to stamp the envelope containing the 90-day letter:
- (5) The IRS employee enters the certified number on the envelope, and lists that same number together, with the name and address of the addressee, on P.S. Form 3877.
 - a. The taxable period(s) for which the notice applies is entered in the remarks column opposite the taxpayer's name and address. The notices to be mailed, together with P.S. Form(s) 3877, are presented to the post office.

- b. The postal employee first compares the certified mail numbers, and names and addresses, on the envelope with those on P.S. Form 3877 and counts the number of envelopes. He/she then indicates post office receipt of this mail by signing and inserting the post mark on P.S. Form 3877, and returns the forms to the IRS employee.
- c. The IRS employee must initial and date P.S. Form 3877 as part of the permanent record of mailing, in the event that, if called as a witness, the employee can testify as to the exact date on which the letters were presented for mailing. The receipted forms are numbered consecutively and retained in a separate file.
- d. Under no circumstances will the receipted P.S. Form 3877 pertaining to the mailing of Letter 3523 be commingled with any other mailing records.

4.23.22.11.14
(05-16-2018)
**Letter 3523 Returned by
the Post Office**

- (1) If a Letter 3523 sent by certified mail cannot be delivered by the U.S. Postal Service because the addressee moved and left no forwarding address, the issuing office will, provided sufficient time remains on the statute, follow the procedures for locating taxpayers.
- (2) The Master File address will be considered the taxpayer's last known address or address of record if the taxpayer cannot be located or a new address is not provided or verified by the taxpayer. Research the address using CC INOLE or by requesting CC MFTRA to determine if the address was updated after the notice was mailed. If Master File shows a different address the notice should be re-mailed to that address.
- (3) In such cases where there is insufficient time to reissue the notice or where the address on the latest filed return is the address to which the notice delivery attempts were made, upon expiration of the 90-day period, the employment taxes are assessed by default in the absence of a petition to the Tax Court or an agreement. The envelope in which the letter was originally mailed and the notice itself should be securely stapled in the taxpayer's file, as they are evidence that the IRS has complied with the law and mailed the notice by certified mail to the taxpayer's last known address.

4.23.22.11.15
(05-16-2018)
**Correspondence or
Taxpayer Contact
Indicating Change of
Address**

- (1) If IRS correspondence solicits or requires a taxpayer response and it is returned to the IRS by the taxpayer with corrections to the taxpayer's address information, that correspondence will constitute clear and concise notification of a change of address.
- (2) If a taxpayer's address is outside of the United States or its possessions or territories, the following information is required: number, street, city, province or state, postal code, name of country, and apartment/room/suite number if applicable. The country name should **not** be abbreviated.
- (3) A new complete address provided over the telephone or in an interview with the taxpayer or their representative will suffice as "clear and concise notification" if there is an ongoing examination and there is no reason to believe that the caller or person interviewed is not the taxpayer or an authorized representative.
- (4) The elements of a new complete address are:
 - a. Number and street (or P.O. Box number if mail is not delivered to street address).

- b. Apartment or suite number.
 - c. City, town, or post office, state, and ZIP code.
 - d. Foreign address information: see (2) above.
- (5) Once the clear and concise notification of the address change is received, Form 2363, Master File Entity Change, must be submitted to update the internal records with the correct address. The completed Form 2363 is forwarded to CCP by fax or mail. For CCP mailing address information, refer to the appropriate Field Liaison or the Team 101 Manager at: <http://mysbse.web.irs.gov/examination/cp/default.aspx>. See IRM Exhibit 4.4.11-1, Form 2363 Name Change and Address Change Requirements, for instructions on completing Form 2363.
 - (6) Treas. Reg. 301.6212-2 and Rev. Proc. 2010-16 provide guidance regarding procedures for making a change of address and defining “clear and concise notification.”
 - (7) The telephone conversation or interview with the taxpayer or representative about the new address must be recorded on the contact sheet. The record should contain the date of the phone call or interview and the name and phone number of the caller (employee/representative). The record should also contain the taxpayer’s full name, old address, SSN and/or EIN and the new address. Also, indicate the date Form 2363 was prepared and sent to CCP for processing.
 - (8) Attach Form 3198 to the case file and indicate in “Other Instructions” of the Special Features section that “Address has been changed from Return.” See IRM 4.4.11.5, Group Responsibilities.
 - (9) The examiner must determine whether the taxpayer is establishing a separate address from the spouse (for Schedule H, Household Employment Taxes, audits). Prepare separate Forms 2363 for each spouse. See IRM 4.4.11.2, Name, Address, and Marital Status Changes.

4.23.22.11.16
(01-08-2021)

**Authorized
Representative Defined**

- (1) An authorized representative is an individual granted the authority to represent a taxpayer before the IRS.
- (2) Form 2848, Power of Attorney and Declaration of Representative, is used to grant authority to a person. This form provides that the person to which the IRS may disclose otherwise confidential taxpayer information must fall into one of the following categories:
 - Attorney
 - Certified Public Accountant
 - Enrolled Agent
 - Officer
 - Full-Time Employee
 - Family Member
 - Enrolled Actuary
 - Unenrolled Return Preparer
 - Enrolled Retirement Plan Agents
 - Students in Qualified Low Income Taxpayer Clinic (QLITC) or Student Tax Clinic Program (STCP) under special order issued by the Office of Professional Responsibility

- (3) Unenrolled return preparers have limited authority. See Pub 947, Practice Before the IRS and Power of Attorney, Rev. Proc. 81-38 is modified and superseded by Rev. Proc. 2014-42 (Annual Filing Season Program) for tax returns and claims for refund prepared and signed (or prepared if there is no signature space on the form) after December 31, 2015.

