



MANUAL TRANSMITTAL

Department of the Treasury
Internal Revenue Service

4.23.25

JUNE 15, 2021

EFFECTIVE DATE

(06-15-2021)

PURPOSE

- (1) This transmits revised IRM 4.23.25, Employment Tax - Voluntary Closing Agreements for Employment Tax Cases.

BACKGROUND

- (1) The information contained in this IRM pertains specifically to requests made by taxpayers who are not currently under audit with respect to a particular federal employment tax issue (non-worker classification), but who desire to come forward to disclose an error with respect to federal employment tax liabilities for which exigent circumstances exist. This IRM is not intended to replace or eliminate the requirement for or otherwise substitute for the regulatory corrected return procedures.

MATERIAL CHANGES

- (1) IRM 4.23.25.1.6. Added information on Taxpayer Advocate Service and Disclosure.
- (2) IRM 4.23.25.9(1). Address change for Employment Tax/Voluntary Request Coordinator.
- (3) IRM 4.23.25.9(1). Change of room number for Voluntary Closing Agreement Coordinator.
- (4) Editorial and technical changes have been made throughout this section.

EFFECT ON OTHER DOCUMENTS

This material supersedes IRM 4.23.25, dated August 3, 2018.

AUDIENCE

Large Business & International (LB&I) and Small Business/Self Employed (SB/SE) employees dealing with the receipt, control, and processing of requests received under the Voluntary Closing Agreement Process – Employment Tax (VCAP - ET).

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4.23.25

Voluntary Closing Agreement Process - Employment Tax (VCAP - ET)

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Voluntary Closing Agreement Process - Employment Tax (VCAP - ET) 4.23.25

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4.23.25.1
(08-03-2018)
Program Scope

- (1) **Purpose:** This section explains the procedures for the receipt, control, and processing of requests received under the Voluntary Closing Agreement Process – Employment Tax (VCAP - ET).
- (2) **Audience:** This section contains instructions and guidelines for Exam Case Selection, Employment Tax Workload Selection and Delivery, Small Business/Self-Employed (SB/SE) examiners, and LB&I examiners to use when VCAP - ET requests are submitted and assigned.
- (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 and to support compliance with employment tax laws.
- (5) **Primary Stakeholders:**
 - Employment Tax - Workload Selection and Delivery (SE:S:DCE:HQ:ECS:S:ETEGCS:EWSD)
 - Specialty Examination - Employment Tax (SE:S:DCE:E:SE:ET)
 - Specialty Examination Policy, Employment Tax Policy (SE:S:DCE:E:HQ:SP:ETP)
 - Large Business and International (LB&I)

4.23.25.1.1
(08-03-2018)
Background

- (1) The IRS believes that it is in the best interests of tax administration to offer a process whereby certain employment tax issues not involving worker classification can be permanently and conclusively resolved through a voluntary closing agreement process. Under this administrative process, taxpayers must demonstrate that Form 94X-X and other correction procedures would not allow for the prompt, permanent, and conclusive resolution of the issue(s). The objective of this process is to reduce administrative burden by saving time and resources for both the IRS and taxpayers and to enhance voluntary compliance. While these procedures provide for the submission of requests for a closing agreement, whether an agreement will be entered into is a matter within the Commissioner's sole discretion. For example, the Commissioner may decline an otherwise proper request for a voluntary closing agreement where the tax dollars at issue are small in comparison to the amount of time and effort the IRS would expend to enter into a closing agreement under these procedures.

4.23.25.1.2
(08-03-2018)
Authority

- (1) The Internal Revenue Code Subtitle C includes:
 - 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 the source.
- (2) The Employment Tax Program is governed by Policy Statements and other internal guidance that apply to all Service personnel regardless of operating division. The Policy Statements found in IRM 1.2.1, Servicewide Policies and Authorities, Servicewide Policy Statements apply to all employment tax issues

and examinations. Examiners should review these Policy Statements to properly perform their examination duties.

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

4.23.25.1.3
(08-03-2018)
Responsibilities

- (1) Director, Specialty Examination Policy, is responsible for the procedures and updates addressed in this IRM.
- (2) Director, Examination Specialty Tax, is the executive responsible for examination operational compliance.
- (3) Director, Exam Case Selection, is responsible for the VCAP - ET Coordinator duties related to the process.

4.23.25.1.4
(08-03-2018)
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.

4.23.25.1.5
(08-03-2018)
Acronyms

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

Acronym	Definition
ASED	Assessment Statute Expiration Date
CCP	Centralized Case Processing
DOL	Department of Labor
ET	Employment Tax
FICA	Federal Insurance Contributions Act
FITW	Federal Income Tax Withholding
FUTA	Federal Unemployment Tax Act

Acronym	Definition
LB&I	Large Business & International
RRTA	Railroad Retirement Tax Act
SB/SE	Small Business/Self-Employed
SOL	Statute of Limitations
TBOR	Taxpayer Bill of Rights
TE/GE	Tax Exempt/Government Entities
VCAP	Voluntary Closing Agreement Process
VCAP - ET	Voluntary Closing Agreement Process – Employment Tax
VCSP	Voluntary Classification Settlement Program
WSD	Workload Selection and Delivery

4.23.25.1.6
(06-15-2021)

Related Resources

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

Source	Description of Guidance
IRM 4.23. Employment Tax IRM	IRM sections the majority of which are owned by SB/SE Specialty Examination - Policy, provides Servicewide instructions for employees of all operating divisions involved with the correct filing, reporting, and payment of employment taxes. IRM 4.23 serves as the foundation for consistent administration of employment taxes by various IRS operating divisions.
IRM 8.13 Closing Agreements – Processing Closing Agreement in Appeals	Provides general advisory procedures for Service personnel, including employees in the Wage and Investment (W&I), Small Business/Self-Employed (SB/SE), Large Business and International (LB&I) operating divisions, to address closing agreements entered into under IRC 7121.

Source	Description of Guidance
Treasury Regulation section 301.7121-1(a)	Provides that a closing agreement may be entered into for any case in which there appears to be an advantage in having the case permanently and conclusively closed, or if sufficient reasons are shown by the taxpayer for desiring a closing agreement, and it is determined by the Commissioner that the United States will sustain no disadvantage through consummation of an agreement.

(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 Analysts*.
- The web site "Examining an Employment Tax Case" at: <https://portal.ds.irsnet.gov/sites/vl014/pages/home.aspx?bookshelf=examining%20an%20employment%20tax%20case>.

(3) The IRS adopted the Taxpayer Bill of Rights (TBOR) in June 2014. The TBOR lists rights that already existed in the tax code, putting them in simple language and grouping them into ten fundamental rights. Employees are responsible for being familiar with and acting in accord with taxpayer rights. See IRC 7803(a)(3), Execution of Duties in Accord with Taxpayer Rights. For additional information about the TBOR, see <https://www.irs.gov/taxpayer-bill-of-rights>.

(4) 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://irsource.web.irs.gov/PGLD/Pages/Home.aspx> for additional information.

4.23.25.2
(08-03-2018)
Introduction to Voluntary Closing Agreement Requests to Resolve Employment Tax Issues

- (1) Treasury Regulation section 301.7121-1(a) provides that a closing agreement may be entered into in any case in which there appears to be an advantage in having the case permanently and conclusively closed, or if good and sufficient reasons are shown by the taxpayer for desiring a closing agreement, and it is determined by the Commissioner that the United States will sustain no disadvantage through consummation of an agreement. Subject to the guidelines provided in the regulations, whether an agreement will be entered into is a matter within the Commissioner's sole discretion and therefore, within the discretion of those to whom the Commissioner has delegated the authority to enter into and approve such agreements. In exercising such discretion, the Service may properly decline to enter into voluntary closing agreement.

Example: The Service may properly decline an agreement when the tax dollars at issue are small in comparison to the amount of time and effort the Service would expend to enter into a closing agreement under this process.

- (2) IRM 8.13.1, Closing Agreements – Processing Closing Agreement in Appeals, provides general advisory procedures for Service personnel, including employees in the Wage and Investment (W&I), Small Business/Self-Employed (SB/SE), and Large Business and International (LB&I) operating divisions, to address closing agreements entered into under IRC 7121. In addition, examiners and taxpayers may refer to IRM 8.13.1 for general information and procedures regarding closing agreements under IRC 7121 for content, preparation, execution and other general closing agreement procedures. Final determinations of specific matters pursuant to IRC 7121 are ordinarily reflected on Form 906, Closing Agreement on Final Determination Covering Specific Matters. Form 906 will be used under this Voluntary Closing Agreement Process for employment taxes (VCAP - ET).
- (3) The information contained in this IRM pertains specifically to requests made by taxpayers who are not currently under audit with respect to a particular federal employment tax issue (non-worker classification), but who desire to come forward to the Commissioner to disclose an error with respect to federal employment tax liabilities for which exigent circumstances exist. This IRM is not intended to replace or eliminate the requirement for or otherwise substitute for the regulatory corrected return procedures, (such as Form 941-X, Adjusted Employer's QUARTERLY Federal Tax Return or Claim for Refund) when appropriate.
- (4) Unless otherwise indicated, the term "exigent circumstances" means situations for which the Form 94X-X or other corrected return procedures would not allow for prompt, permanent, and conclusive resolution of the particular employment tax issue(s) at hand and the taxpayer demonstrates the existence of such circumstances.
- (5) VCAP - ET issues addressed in this IRM do not include requests for refunds or adjustments of overpayments of employment taxes nor do they include requests for voluntary closing agreements to resolve employment tax issues where the taxpayer making such request has not filed employment tax returns for the tax periods to which the requested voluntary correction pertains. See IRM 4.23.25.3(2) below. In circumstances in which a taxpayer believes it is entitled to a refund or adjustment of employment taxes already paid, the taxpayer must follow regular claim for refund or adjustment procedures. In cir-

cumstances in which the taxpayer has failed to file the required employment tax returns, voluntary requests for closing agreements will not be entertained under these IRM provisions, and the taxpayer will be instructed to file the required returns under regular return filing procedures.

- (6) **The VCAP - ET process does not apply to worker classification issues.** The Voluntary Classification Settlement Program (VCSP) for worker classification is available for voluntary requests to resolve the prospective classification of workers. The VCSP enables taxpayers to resolve past worker classification issues and achieve certainty under federal employment tax law at a low cost by voluntarily reclassifying workers for future tax periods. VCSP is described in Announcement 2012-45. VCSP provides an opportunity for taxpayers who are currently treating their workers (or a class or group of workers) as independent contractors or other non-employees to reclassify their workers as employees for employment tax purposes for future tax periods, with partial relief from incurred federal employment tax liabilities. The VCSP is available for all businesses, including tax-exempt organizations and government entities. See IRM 4.23.20, Employment Tax - Voluntary Classification Settlement Program (VCSP) Procedures.

4.23.25.3
(08-03-2018)

**Examples of VCAP – ET
Issues**

- (1) Closing agreements arising from VCAP - ET issues may be entered into when:
- It is advantageous to have the employment tax issue permanently and conclusively resolved,
 - The taxpayer can demonstrate that the Form 94X-X or other corrected return procedures would not allow for prompt, permanent, and conclusive resolution of the particular employment tax issue, and
 - It has been determined that entering into a closing agreement would not prejudice the interests of the government.
- (2) The following represent some examples of acceptable reasons for entering into a closing agreement based upon a voluntary closing agreement request to resolve employment tax issues in non-worker classification matters:
- The taxpayer seeks to permanently and conclusively establish its final federal employment tax liability in order to facilitate a pending or imminent transaction. For example, a proposed merger or sale of the taxpayer's business or subsidiary for which a prompt and conclusive resolution of the taxpayer's employment tax liabilities is necessary.
 - A taxpayer, in the process of liquidation or dissolution, desires a closing agreement with respect to its federal employment tax liabilities in order to wind up its affairs.
 - When federal employment tax liabilities are barred from assessment but the taxpayer desires to resolve such federal employment tax liabilities for other than federal tax purposes.
 - When a taxpayer is unable to attribute specific wage amounts to any employee and is, therefore, unable to properly comply with the regular Form 94X-X or other corrected return procedures because it is unable to issue accurate corrected Forms W-2 to affected individuals. This includes situations where the taxpayer provided fringe benefits (such as subsidized meals in a cafeteria) to workers but the taxpayer does not possess adequate records to determine the exact amount of the fringe benefit provided to any individual employee for the period in question.

- e. When the Department of Labor or other state or federal agency has completed an audit and the taxpayer desires to pay federal employment tax liabilities in a manner similar to the determination made by the other agency.
 - f. To address a mass error in wage reporting that affects a high volume of employees but involves a de minimis amount of understated reported wages per employee. This may involve taxable fringe benefits such as group term life insurance.
- (3) A VCAP - ET may not be entered into when entering into a closing agreement will prejudice the interests of the government. The following represent some examples, although not exhaustive, of requests for closing agreements that generally should not (or cannot, in the case of a, b, c, and d below) be accepted:
- a. Voluntary closing agreements in which the taxpayer has paid federal employment taxes and is now seeking to obtain a refund or adjustment of such employment taxes. See IRM 4.23.25.2(5) above.
 - b. Voluntary closing agreements in which the taxpayer has failed to file employment tax returns for the tax periods that are the subject of the request. The failure to furnish and file information returns to employees in connection with wage payments does not constitute a failure to file employment tax returns for purposes of this paragraph. See IRM 4.23.25.2(5) above.
 - c. Voluntary closing agreements in which the taxpayer or any of its subsidiaries, related entities, or corporate officers is under criminal investigation by the IRS.
 - d. Voluntary closing agreements in which the taxpayer is under a federal employment tax examination.
 - e. Voluntary closing agreements in which the taxpayer is under Department of Labor (DOL) or state agency examination.
 - f. Voluntary closing agreements in which the taxpayer is a petitioner in a case docketed with the United States Tax Court for any issue or time period.
 - g. Voluntary closing agreements in which the taxpayer is a plaintiff in a case docketed in another court, including a state court with regard to tax or employment matters.
 - h. Voluntary closing agreements in cases in which the taxpayer has received a private letter ruling or determination letter governing the employment tax liabilities at issue.
 - i. Voluntary closing agreements in which the issue involved has been the subject of a prior audit and the Service has assessed employment taxes with regard to the issue.
 - j. Voluntary closing agreements in cases in which the taxpayer is unwilling, but able, to file Forms W-2/W-2c and furnish Forms W-2/W-2c to affected employees.
 - k. Voluntary closing agreements that do not involve employment taxes, but which only involve individual income tax issues of the affected individuals (for example, requests for voluntary closing agreements concerning the failure to issue Forms 1099 or other non-employee compensation related information returns).

- l. Voluntary closing agreements in which the Service has provided methods for correction of specific errors by regulation or other guidance, for example under the non-duplication rules of IRC 3121(v).
 - m. Voluntary closing agreements in which the taxpayer has not taken steps to prevent the error from occurring in future periods.
 - n. Voluntary closing agreements in which the taxpayer does not intend to comply with the tenets of the agreement in future periods.
 - o. Voluntary closing agreements in which issues are within the jurisdiction of other IRS Operating Divisions, such as issues handled by Tax Exempt/Government Entities (TE/GE).
 - p. Voluntary closing agreements in which the taxpayer or any related or subsidiary entity is a foreign entity that is a resident of a foreign country with which the United States has an income tax treaty in force and the taxpayer has not provided adequate information in accordance with IRM 4.23.25.4(1)(n).
 - q. Voluntary closing agreements in which the taxpayer or any of its related or subsidiary entities are in collection status or involved in collection procedures with respect to the issue for which the taxpayer is seeking a closing agreement.
- (4) In applying paragraph (3), the Service may consider whether any of the above circumstances apply to related entities of the taxpayer.

4.23.25.4
(06-15-2021)

**Process for Submission
of Voluntary Closing
Agreement Requests to
Resolve Employment
Tax Issues (Non-Worker
Classification)**

- (1) There is not a specific form for use in requesting consideration for a VCAP - ET; however, all requests must include at least the following information:
- a. Taxpayer's name, address and EIN,
 - b. Tax period(s), number of employees affected, calculation of amount of potential tax per tax period(s),
 - c. Form 2848, Power of Attorney and Declaration of Representative, if any,
 - d. Detailed statement of issues for which a closing agreement is sought, including the reasons for the failure to include the amounts at issue as wages, and steps taken by the taxpayer to correct the issue for prospective compliance,
 - e. A detailed statement addressing the reasons why the taxpayer cannot use the regular corrected return (e.g., Form 941-X) procedures to correct the employment tax liabilities at issue,
 - f. A statement regarding whether the taxpayer is able and willing to prepare any necessary Form(s) W-2/W-2c,
 - g. A statement as to whether the taxpayer or any of its related or subsidiary entities are under examination by the IRS, another federal agency, or any state for the taxable years at issue,
 - h. A statement that to the best of the taxpayer's knowledge, neither the taxpayer nor any of its related or subsidiary entities or officers are under criminal investigation,
 - i. A statement confirming that the taxpayer has filed employment tax returns or had such returns filed on its behalf for the taxable years at issue,
 - j. A statement that neither the taxpayer nor any of its related or subsidiary entities have been audited by the IRS in prior years for the issue for which the taxpayer is seeking a closing agreement,
 - k. A statement as to whether the taxpayer or any of its related or subsidiary entities are in collection status or involved in collection procedures with respect to the issue for which the taxpayer is seeking a closing agreement,

- l. A statement that the taxpayer has not requested or received a private letter ruling or determination letter with respect to the issue for which the taxpayer is seeking a closing agreement,
 - m. A statement that the taxpayer is not a petitioner in a case docketed with the United States Tax Court for any issue or time period, or is not a plaintiff in a case docketed in another court, including a state court with regard to tax or employment matters,
 - n. If the taxpayer or any related or subsidiary entity is a foreign entity that is a resident of a foreign country with which the United States has an income tax treaty in force, a statement for each such foreign entity as to whether the entity has or has had a permanent establishment in the United States, together with a detailed explanation as to how this determination was made,
 - o. An acknowledgement that if the Service determines that the taxpayer has intentionally misrepresented facts in its request, the Service may open an examination regarding the issues for which the request for a closing agreement was made, and
 - p. An acknowledgement by the taxpayer, signed under penalties of perjury, that its representations of facts are true and correct to the best of its knowledge.
- (2) All VCAP - ET requests must be submitted to the following address:
Employment Tax/Voluntary Request Coordinator
Internal Revenue Service
7940 Kentucky Drive
Mail Stop 5702A,
Florence, KY 41042

4.23.25.5
(08-03-2018)
**Role of the Voluntary
Closing Agreement
Coordinator**

- (1) The role of the Voluntary Closing Agreement Coordinator (Coordinator) is to ensure the process for VCAP - ET requests is consistently applied and to provide a contact point for Service personnel who receive requests for voluntary closing agreements not involving classification issues. An Employment Tax Policy Analyst assigned the VCAP - ET process is available to work with the coordinator. The Coordinator has the following responsibilities:
- a. Review all VCAP - ET requests to ensure all required information is present and to make an initial determination as to whether the Service should pursue possible resolution through a voluntary closing agreement. In doing so, the Coordinator will confer with the U.S. Competent Authority (specifically, the Treaty Assistance and Interpretation Team, LB&I) regarding the sufficiency of any information required to be provided in accordance with IRM 4.23.25.4(1)(n).
 - b. In cases in which the Coordinator determines that the request should be accepted for development of a closing agreement, the Coordinator will take steps to establish examination controls and forward the case to the appropriate employment tax group for consideration. See IRM 4.23.25.6 below. The Coordinator will use Letter 6022, VCAP Acknowledgment for Employment Taxes, to notify the taxpayer that the request for a Voluntary Closing Agreement has been accepted for further investigation.
 - c. If the Coordinator determines that the request should not be accepted the Coordinator will use Letter 6022 to notify the taxpayer of the decision. Letter 6022 provides specific reasons for denial to the taxpayer and

provides other available processes that will allow the taxpayer to correct the errors. The letter also provides instructions on correcting the request for re-submission.

- d. The acceptance of the initial VCAP - ET request by the Coordinator constitutes only a preliminary determination that will allow the Service to investigate further whether a closing agreement would be in the best interest of the government; it does not constitute final acceptance of the request to resolve the matter through the execution of a closing agreement.

4.23.25.6
(08-03-2018)

**Procedures for
Establishing Controls on
VCAP - ET Cases**

- (1) All requests accepted for further investigation will be opened for examination using the established classification process for assignment to the appropriate field group.
- (2) Controls will be established on the last quarter of the most current calendar year covered by the request. Examiners will expand the scope to the appropriate quarters affected by the adjustments requested. If previous years are involved, statute controls must be considered and any necessary consent to extend the time to assess employment taxes, via Form SS-10, Consent to Extend the Time to Assess Employment Taxes, must be requested as soon as possible. Tax periods with barred statutes that are covered by the request will not be controlled, but may be included in the closing agreement.
- (3) Coordination with the appropriate group manager is required since these cases will be assigned directly to the field group for assignment after examination controls have been established.

4.23.25.7
(08-03-2018)

**Process for Examiners
in Working VCAP - ET
Cases**

- (1) Upon receipt of a VCAP - ET case, the examiner will contact local TEGE Area Counsel to request assignment of the designated local counsel attorney to:
 - a. Assist in developing questions and obtaining information necessary for the examiner to determine whether entering into a closing agreement will cause the United States to sustain a disadvantage or otherwise prejudice the government,
 - b. Assist in drafting the requisite closing agreement, and
 - c. Provide any other legal assistance.
- (2) Examiners will obtain any missing information and ask follow-up questions as necessary. To the extent that the request for a closing agreement is dependent on the conclusion that:
 - a. The taxpayer or any related or subsidiary entity is a foreign entity that is a resident of a foreign country with which the United States has an income tax treaty in force, and
 - b. Such foreign entity does not have or has not had a permanent establishment in the United States,

the examiner should consult with the U.S. Competent Authority (specifically, the Treaty Assistance and Interpretation Team, LB&I) regarding any necessary follow-up.

- (3) Examiners must document Counsel involvement and subsequent approval of the closing agreement in the case file.

4.23.25.8

(08-03-2018)

**Guidelines for Preparing
Closing Agreements,
Including Requiring
Form(s) W-2 or W-2c**

- (1) Examiners should refer to IRM 8.13.1.3.4, Guidelines for Preparing Closing Agreements, IRM 8.13.1.2.5, Execution By Taxpayer, and IRM 8.13.1.3.13, Execution for the Commissioner, for general guidelines regarding the preparation and execution of closing agreements and pattern closing agreement language. TEGE Area Counsel is responsible for reviewing closing agreements solely for legal sufficiency, and is not responsible for rendering a determination as to whether entering into a closing agreement will cause the United States to sustain a disadvantage.
- (2) In general, all taxpayers requesting to resolve employment tax issues in non-worker classification matters will be required to file a Form W-2, Wage and Tax Statement, or Form W-2c, Corrected Wage and Tax Statement, for each affected employee for each affected tax year in connection with the resolved matters.
- (3) If the Service has determined that it is not necessary for the taxpayer to issue a fully completed Form W-2 or W-2c, the taxpayer may file and furnish Form(s) W-2 or W-2c for the affected employees for the affected tax years with no changes to the information entered in Box 1. However, the taxpayer must report the increased social security/Medicare wages in Boxes 3 and 5 on each Form W-2 or W-2c.
- (4) Filing the Form W-2 or W-2c in the manner described will reflect increased wages for social security and Medicare benefit purposes, but will not require employees to file Form 1040X, Amended U.S. Individual Income Tax Returns, for the year to which the Form W-2c relates. The following suggested language may be provided to the employee with a copy of the Form W-2c:
You are receiving a copy of Form W-2c, Corrected Wage and Tax Statement, that reflects a correction and increase in social security wages and Medicare wages reported to the Social Security Administration. The corrected wages are reported in Box 3 for social security wages and Box 5 for Medicare wages. The Form W-2c does not include any increase to your wages reported in Box 1 for federal income tax purposes. The Form W-2c is for informational purposes only relating to social security and Medicare wages; it does not require any action by you. You are not required to file Form 1040X, Amended U.S. Individual Income Tax Return based on receipt of this Form W-2c.
- (5) The taxpayer must file each original Form W-2 or W-2c (along with transmittal Form W-3, Transmittal of Wage and Tax Statement, or Form W-3c, Transmittal of Corrected Wage and Tax Statements) with the Social Security Administration, and must furnish copies of the W-2 or W-2c to the affected employees and to the revenue agent prior to finalizing the closing agreement. The examiner will request verification of filing and document the action in the case file.
- (6) Any adjustment to the employment taxes made as part of the closing agreement under this IRM shall be made without interest pursuant to IRC 6205(a)(1) and Treas. Reg. section 31.6205-1 as long as the taxpayer pays the liability at the time the closing agreement is executed.
- (7) Determinations concerning whether taxpayers are liable for penalties in connection with requests for voluntary closing agreements in connection with employment tax matters will be made on a case-by-case basis.

- (8) Once the taxpayer and the Service representative have signed an agreement, it is final and conclusive. It cannot be reopened as to the matters agreed upon, nor may it be annulled, modified, set aside or disregarded in any suit, action or proceeding unless there is a showing of fraud, malfeasance, or misrepresentation of material fact.

4.23.25.9
(06-15-2021)

**Procedures for Closing
VCAP - ET Cases,
Including Document
Retention Requirements**

- (1) Examiners will prepare the closing agreement, Form 906, in triplicate and obtain the appropriate original signatures from the taxpayer or duly authorized Power of Attorney (POA) on all three agreements.
- (2) The examiner's report and/or work papers must discuss all significant factors relating to the closing agreement (including the source of modifications to pattern agreements). This discussion should be prominently located in the file and should explain the reasons for obtaining the agreement (or denying it) and what the parties intend to accomplish by it.
- (3) Significant matters are to be set forth in the closing agreement in original print. Examiners may not type over an erasure or use correction tape or correction liquid.
- (4) Examiners may not change or add to the agreement after receiving the signed closing agreement and payment due without obtaining the written agreement of the taxpayer. If a correction is necessary after the closing agreement has been executed by the taxpayer, the correction may be handwritten, and all parties to the agreement must initial and date the change.
- (5) Examiners will prepare an Employment Tax Examination Report (ETER) that reflects the appropriate adjustments and penalties, if any, agreed to in the executed closing agreement. The report is to be shared with and signed by the taxpayer. If the adjustment meets the criteria, it will be treated as interest-free pursuant to IRC 6205(a)(1) and Treas. Reg. section 31.6205-1.

Note: There are **no** interest-free adjustments for underpaid FUTA taxes. See IRM 4.23.8.3, Interest-Free Adjustments - In General.

- (6) Application of penalties should be specifically addressed in the closing agreement.
- (7) All audits conducted under these procedures will generally be limited to the issue raised by the taxpayer in their request unless the examiner identifies new issues or a gross misrepresentation of the facts is found. Workpapers and appropriate lead sheets will be completed detailing all audit steps taken and conclusions reached.
- (8) Examiners will follow normal employment tax case closing procedures outlined in IRM 4.23.10, Employment Tax - Report Writing Guide for Employment Tax Examinations. Examiners will check the block "Closing Agreements – Form 906" under the section "Forward to Technical Services" on Form 3198, Special Handling Notice for Examination Case Processing.
- (9) The examiner will process all payments received prior to closing the case. If a closing agreement resolves a taxable year barred from assessment by the period of limitation, payment with respect to the barred statute year is processed by the examiner to the general fund. See IRM 4.23.25.10 below.

- (10) The Voluntary Closing Agreement Coordinator in Employment Tax Centralized Technical Services will approve all Closing Agreements for SB/SE Employment Tax. The case is to be updated to Status "21", closed agreed, and the entire file to be shipped to:
Voluntary Closing Agreement Coordinator
Internal Revenue Service
550 Main Street, Room 9010-E
Cincinnati, OH 45202-3222
- (11) The authorized person under Delegation Order 8-3 will sign all three copies of the Closing Agreement. One copy of the agreement will be maintained in Technical Services; one copy will be sent to the taxpayer; and one copy will remain in the case file. Technical Services will close the case to Centralized Case Processing (CCP) for final assessment and closure.

4.23.25.10
(08-03-2018)
**Procedures for
Processing Payments
for Barred Years**

- (1) If a VCAP - ET case includes a barred ASED period as described in IRM 4.23.25.3(2)(c), the payment(s) for the barred year(s) will be processed as follows:
- Complete Form 3244-A, Payment Posting Voucher - Examination, for each barred statute year. **Post all money to the 4th quarter of the year.** Do not split between quarters even if the open years include assessments by quarter.
 - Use TC670 to post the payment.
 - Input a "0" under the Transaction Data section for the TC 570 to ensure the money will not be refunded to the taxpayer.
 - Forward Forms(s) 3244-A to the Campus, following the procedures in IRM 4.23.11.5.2, Forwarding Form 3244-A.
 - Complete Form 3870, Request for Adjustment, for each barred ASED period. Indicate: "The barred year payment was agreed to as part of a Form 906 closing agreement. The TC 670 posted on [date] in the amount of [\$XX.XX] should be moved to excess collection." Leave the Form 3870 in the case file for CCP. CCP will process the Form(s) 3870 when completing the final closing actions.
 - Note on Form 3198 that the file includes Form(s) 3870 for processing.

