



# MANUAL TRANSMITTAL

Department of the Treasury  
Internal Revenue Service

4.23.26

JANUARY 9, 2024

## EFFECTIVE DATE

(01-09-2024)

## PURPOSE

- (1) This transmits revised IRM 4.23.26, Employment Tax, Campus Employment Tax Non-Filer Program.

## MATERIAL CHANGES

- (1) IRM 4.23.26.1.5 - Added new content for the Specialty Employment Tax Application (SETA).
- (2) IRM 4.23.26.1.6 - Added new content to the acronym table.
- (3) IRM 4.23.26.2(1) - Added new content to clarify the responsibility for issuance of Letter 4107.
- (4) IRM 4.23.26.2 - Added new content for ETNF returns received prior to the Initial Contact Letter (ICL)(Status is less than 10).
- (5) IRM 4.23.26.3(4) - Added content to the If/Then chart when a business is sold.
- (6) IRM 4.23.26.4(1) - Removed the reference in the **Note** to the ETNF database since it is being replaced by SETA.
- (7) IRM 4.23.26.11(2) - Updated the reference from the ETNF database to SETA.
- (8) IRM 4.23.26.15 - Added clarification on reconsiderations.
- (9) Editorial changes have been made throughout this IRM. IRM references and hyperlinks were reviewed and updated as necessary.

## EFFECT ON OTHER DOCUMENTS

This material supersedes IRM 4.23.26 dated January 26, 2022.

## AUDIENCE

This IRM is intended for use by SB/SE Campus Examination Operations.

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4.23.26

Campus Employment Tax Non-Filer Program

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4.23.26.1  
(01-26-2022)  
**Program Scope and  
Objective**

- (1) **Purpose:** This IRM provides procedural guidance for Small Business/Self Employed (SB/SE) Campus Examination operation employees completing Employment Tax Non-Filer (ETNF) examinations. It provides instruction to help examiners accurately prepare Substitute for Return (SFR) employment tax returns and to ensure employers are in full compliance with all tax laws and regulation with regards to: filing compliance, making timely payments, and claiming valid credits.
- (2) **Audience:** IRS employees who are responsible for completing ETNF examinations in SB/SE Campus Exam
- (3) **Policy Owner:** Director, Small Business/Self Employed (SB/SE), Headquarters Examination - Field and Campus Policy
- (4) **Program Owner:** Program Manager, Campus Examination and Field Support
- (5) **Program Goals:** The program goals are to ensure all employers are in compliance with filing their employment tax returns and to educate the taxpayer about their legal obligations and rights.

4.23.26.1.1  
(01-26-2022)  
**Background**

- (1) The ETNF program is worked by Cincinnati campus. The Audit Information Management System (AIMS) will show Primary Business Code (PBC) 296, Project Code (PC) 0453.

**Note:** Cincinnati campus does not work PBC 212.

- (2) SB/SE Employment Tax Headquarters has primary responsibility for workload identification. Workload selection and delivery is the responsibility of Campus Case Selection.
- (3) Tax examiners will resolve any employment tax issue that comes up during the examination.
- (4) The Federal Insurance Contributions Act (FICA) imposes a tax on both employers and employees. The amount of the tax is based on the amount of wages paid with respect to employment. For more information on what wages are subject to FICA tax, see the chart, Special Rules for Various Types of Services and Payments, in Section 15 of Pub 15, (Circular E), Employer's Tax Guide. FICA tax is composed of:
  - Old Age, Survivors, and Disability Insurance, commonly referred to as Social Security tax,
  - Hospital insurance (Medicare) tax, and
  - Additional Medicare Tax.
- (5) Title IX of the Social Security Act established the unemployment insurance system. The Federal Unemployment Tax Act (FUTA) was designed to encourage states to enact unemployment insurance plans. This would allow states to provide benefits to workers during periods of temporary unemployment. To involve the states, Congress took the following actions:
  - Established the federal unemployment tax rate and
  - Allowed a limited credit against the federal tax to an employer if the state law meets certain federal requirements and the state certifies that the credit is allowable.

- (6) The federal portion of the tax is used to administer both the federal and state programs. Taxes collected by the states are usually paid as unemployment benefits. Generally, no part of the state unemployment tax is withheld from employee wages.
- (7) Employment Tax Forms include:
  - Form 941, Employer's QUARTERLY Federal Tax Return,
  - Form 943, Employer's Annual Tax Return for Agricultural Employees,
  - Form 944, Employer's ANNUAL Federal Tax Return,
  - Form 945, Annual Return of Withheld Federal Income Tax,
  - Form 940, Employer's Annual Federal Unemployment Tax Return,
  - Form 1040, and *Schedule H*, Household Employment Taxes.
- (8) Employment tax returns do not follow statutory notice of deficiency procedures.

4.23.26.1.2  
(01-26-2022)

#### Authority

- (1) IRS has the authority to prepare tax returns for any person or business that fails to submit a tax return required by law or regulation at the time prescribed, or makes (willfully or otherwise), a false, or fraudulent tax return.
- (2) Employment Tax provisions are found at Internal Revenue Code Subtitle C:
  - IRC 3101 through 3134 addresses the Federal Insurance Contributions Act.
  - IRC 3201 through 3241 addresses the Railroad Retirement Tax Act.
  - IRC 3301 through 3311 addresses the Federal Unemployment Tax Act.
  - IRC 3321 through 3322 addresses the Railroad Unemployment Repayment Tax.
  - IRC 3401 through 3406 addresses the Federal Income Tax Withholding (FITW).

**Note:** The ETNF program does not pursue tax pertaining to the Railroad Retirement Tax Act or Railroad Unemployment Repayment Tax.

4.23.26.1.3  
(01-26-2022)

#### Roles and Responsibilities

- (1) The Director, Small Business/Self Employed (SBSE), Headquarters Examination, Field & Campus Policy, is responsible for the ETNF program.
- (2) Management officials are responsible for providing internal controls related to program processes and activities. They are also responsible for ensuring instructions are communicated to and carried out by the proper employees.
- (3) The Taxpayer Bill of Rights (TBOR) lists rights that already existed in the tax code, putting them in simple language and grouping them into 10 fundamental rights. Employees are responsible for being familiar with and acting in accordance with taxpayer rights. See IRC 7803(a)(3), Execution of Duties in Accord with Taxpayer Rights. For additional information about the TBOR, see the *Taxpayer Bill of Rights*.

4.23.26.1.4  
(01-26-2022)

#### Program Management and Review

- (1) The following reviews are used to evaluate the ETNF program:
  - Campus program reviews are conducted to ensure case actions are in accordance with IRM procedures.
  - Examination quality reviews are conducted using IRM 21.10.1, Quality Assurance - Embedded Quality (EQ) Program for Accounts Manage-

ment, Compliance, Field Assistance, Tax Exempt/Government Entities, Return Integrity and Compliance Services (RICS), and Electronic Products and Services Support. .

(2) The following reports are used to evaluate the ETNF program:

- Reports described in IRM 4.4.27, AIMS Procedures and Processing, Reports, are used to monitor in-process cases.
- AIMS Centralized Information System reports are used by Headquarters Policy to review closure statistics and determine the effectiveness of the program.
- Embedded Quality Review System Reports, are used by program analysts to identify error trends.
- National Quality Review System Reports, are used by managers to identify error trends.

4.23.26.1.5  
(01-26-2022)  
**Program Controls**

- (1) Specialty Employment Tax Application (SETA) is a web-based application used to calculate employment tax and penalties, while generating fully auto-populated exam reports and fully/partially populated closing documents.
- (2) Report Generation Software (RGS) is used to monitor open case control and incoming taxpayer correspondence and can be used to manually review case files.
- (3) AIMS command code AMDIS is used to display specific examination and taxpayer account information.
- (4) Regular operational and program reviews are used to evaluate program effectiveness.

4.23.26.1.6  
(01-26-2022)  
**Terms and Acronyms**

- (1) Acronyms used in IRM 4.23.26 are shown below:

Acronym	Definition
AIMS	Audit Information Management System
ASED	Assessment Statute Expiration Date
BLP	Batch Leveraging Processing
BMF	Business Master File
CEAS	Correspondence Examination Automation Support
CIS	Correspondence Imaging System
DC	Disposal Code
EIN	Employer Identification Number
ETNF	Employment Tax Non-Filer
FICA	Federal Insurance Contributions Act
FITW	Federal Income Tax Withholding
FRP	Frivolous Return Program

Acronym	Definition
FTD	Failure to Deposit
FTF	Failure to File
FTP	Failure to Pay
FUTA	Federal Unemployment Tax Act
ICL	Initial Contact Letter
IDRS	Integrated Data Retrieval System
IDT	Identity Theft
IDTVA	Identity Theft Victims Assistance
LLC	Limited Liability Company
PBC	Primary Business Code
PC	Project Code
POA	Power of Attorney
RC	Reasonable Cause
RGS	Report Generation Software
RSED	Refund Statute Expiration Date
SB/SE	Small Business/Self Employed
SETA	Specialty Employment Tax Application
SFR	Substitute For Return
TAS	Taxpayer Advocate Service
TBOR	Taxpayer Bill of Rights
TC	Transaction Code

4.23.26.1.7  
(01-26-2022)

#### Related References

(1) Other IRMs referenced in IRM 4.23.26 are:

- IRM 4.4.12, Examined Closings, Surveyed Claims, and Partial Assessments
- IRM 4.13.3, Central Reconsideration Unit
- IRM 4.19.13, General Case Development and Resolution
- IRM 20.1.1, Introduction and Penalty Relief
- IRM 20.1.2, Failure to File/Failure to Pay Penalties
- IRM 20.1.4, Failure to Deposit Penalty
- IRM 21.3.3, Incoming and Outgoing Correspondence/Letters
- IRM 25.6.1, Statute of Limitations Processes and Procedures
- IRM 25.23.9, BMF Identity Theft Processing
- IRM 25.23.10, Compliance Identity Theft Case Processing

(2) Helpful information can be found on the Exam Research Portal, located on SERP at: <http://serp.enterprise.irs.gov/databases/portals/compliance/exam/exam.html>



4.23.26.2

(01-09-2024)

**Employment Tax  
Non-Filer Returns****Received Prior to Initial  
Contact Letter (Status is  
Less Than 10)**

- (1) If a valid delinquent return(s) is secured after establishing Substitute for Return (SFR) controls, but before the issuance of the Initial Contact Letter (ICL) the tax examiner must decide if the return submitted is correct or if additional information is necessary to properly reflect wages.

**Note:** The account should reflect a -L freeze code, PBC 296, TC 976.

- (2) Update the case to Status 10 and create a RGS record for the taxpayer. Include tax periods of return(s) received and any other non-filed tax periods that will be addressed during the audit.
- (3) Review the return information/images on Correspondence Imaging System (CIS) and IDRS (BRTVU, TRDBV, etc.). If it verifies the information on file:
- Close the case agreed using Disposal Code 03 and issue a quick note informing the taxpayer that their return(s) was processed.
- Note:** If a TC 976 is on TXMODA without a TC 290, a -A freeze will post on TXMODA. Input Priority Code "1" in Item 9 on Form 5344 to prevent the closure from unposting.
- (4) Review the return information/images on Correspondence Imaging System(CIS) and IDRS (BRTVU, TRDBV, etc.). If it only verifies a portion of the information on file:
- Accept filed returns and input a partial assessment of reported wages. Send a quick note, a revised report pursuing unreported wages, and sanitized copies of IRPTR. Refer to IRM 4.23.26.3, Employment Tax Non-Filer Responses and IRM 4.23.26, Partials.
- (5) Review the return information/images on Correspondence Imaging System(CIS) and IDRS (BRTVU, TRDBV, etc.). If it does not verify any information on file:
- Issue Letter 4107, Initial Contact Letter - No Employment Tax Returns Filed, with a 17-day suspense period to start the examination.
- (6) After research, if the return information is unavailable:
- Issue Letter 4107, Initial Contact Letter - No Employment Tax Returns Filed, with a 17-day suspense period to start the examination.

4.23.26.3

(01-26-2022)

**Employment Tax  
Non-Filer Initial Contact  
Letter**

- (1) In most instances, the Batch Leveraging Processing (BLP) Team will issue Letter 4107, Initial Contact Letter-No Employment Tax Returns Filed, with a 17-day suspense period.

**Note:** If for any reason BLP cannot issue the Initial Contact Letter, the ETNF examiner will issue the letter.

- (2) Complete case history with appropriate examiner's time and action taken.
- (3) The Power of Attorney (POA) must be on file for all periods under examination in order to receive a copy of the initial contact letter. See IRM 4.19.13.9, Power of Attorney and Other Third Party Authorizations.

- (4) Letters mailed on cases from Campus Correspondence Examination inventory will include the appropriate Business Unit corporate toll-free number, "Tax Examiner" as the person to contact, and the site-specific identification number.

4.23.26.4  
(01-26-2022)

**Employment Tax  
Non-Filer Responses**

- (1) Responses from a taxpayer to the Letter 4107, Initial Contact Letter-No Employment Tax Returns Filed, or the Letter 4108, 30 Day Letter to Taxpayer-No Employment Tax Returns Have been Filed, are handled in the same manner, provided no assessment is on the account.
- (2) All responses from a taxpayer must be examined; however, requesting additional information in response to Letter 4108 is limited to two attempts.

**Note:** If a letter is sent in reply to taxpayer correspondence, the letter and all letter attachments must identify the originating tax examiner to provide information for any subsequent contact.

- (3) Attempt to contact the taxpayer or POA by telephone when the information provided is insufficient. Explain why the information sent was insufficient and what is still needed. Document the call in case history and include the date, time, and outcome of the phone call. If the taxpayer can e-fax the missing information, suspend the case for 5 business days. If the call attempt was unsuccessful or the taxpayer can't e-fax the missing information, document in the case history.

**Note:** The examiner will advise the taxpayer of the deadline to submit a request for an IRS appeals hearing in all contacts to ensure the taxpayer's right to an appeals hearing is protected. See IRM 4.19.13.11.2, Evaluating Taxpayer Responses, for additional information.

- (4) Use the chart below as a guide to complete taxpayer pre-assessment responses.

If	And	Then
The taxpayer replies to Letter 4107 or Letter 4108 and states return was filed,	No tax return or supporting documents are included,	Research account for filed returns, if unable to locate, send a quick note. <b>Note:</b> If a letter from a taxpayer was received after the initial contact, Letter 4107, then a copy of the quick note should be sent with the second contact (See IRM 4.23.26.5, Second Contacts).
The taxpayer replies to Letter 4107 or Letter 4108 and states returns were filed under another Employer Identification Number (EIN),	Research of IDRS command codes verifies this information is correct,	Close the case "No Change" and issue Letter 4109 to the taxpayer.

If	And	Then
The taxpayer replies to Letter 4107 or Letter 4108 and states returns were filed under another EIN,	Research of IDRS command codes does not verify returns were filed or additional information is needed to resolve the discrepancy,	Send a quick note to the taxpayer with copies of IRPTR prints. <b>Note:</b> If a letter from a taxpayer was received after the initial contact, Letter 4107, then a copy of the quick note should be sent with the second contact.
The taxpayer replies to Letter 4107 or Letter 4108 with copy of return,	Research of IDRS command codes indicates a Transaction Code (TC) 290 posted with tax, wages, and federal income tax withholding,	Close the case "No Change with Adjustment" and issue Letter 4110, No Change Letter When Taxpayer Provides Missing Employment Tax Returns, to the taxpayer.
The taxpayer replies to Letter 4107 or Letter 4108 with copy of return,	Return is missing a signature,	Attempt a phone call for the missing signature. If unable to reach the taxpayer by phone, send a quick note requesting signature.
The taxpayer replies to Letter 4107 or Letter 4108 with the signed return(s) under examination,	The return(s) match the information on file or research of the IDRS command codes show return(s) were received and match the information on file, <b>Note:</b> Correspondence Imaging System (CIS) images or BRTVU prints can be used as copies of return(s) to close an examination as long as the wages match or are higher than reported.	Close the case "Agreed" and issue Letter 4110 to the taxpayer. <b>Note:</b> If a TC 976 is on TXMOD without a TC 290, an -A freeze will post on TXMOD. If the case is being closed, input Priority Code "1" on Form 5344 to prevent the closure from unposting.
The taxpayer replies to Letter 4107 or Letter 4108 with signed returns under examination,	The returns only verify a portion of the information on file,	Accept filed returns and input partial assessment of reported wages. Send a quick note, a revised report pursuing unreported wages, and sanitized copies of IRPTR. See IRM 4.23.26.14, Partial. <b>Note:</b> If returns were in response to Letter 4107, also send Letter 4108.

If	And	Then
The taxpayer replies to Letter 4108 with a signed copy of Form 2504, Agreement to Assessment and Collection of Additional Tax and Acceptance of Over assessment,	N/A	Close the case "Agreed."
The taxpayer replies that the business has been sold,	N/A	Send a quick note requesting the bill of sale or other documents to verify the sale of the business. If documents received from the taxpayer to verify that the business is sold, then the case should be closed as a no-change (DC 02). If no documents are received from the taxpayer, then the case should be closed as a default (DC 08).
The taxpayer replies to Letter 4107 or Letter 4108 stating they had no employees during the examination period(s),	N/A	Refer case to Field Employment Tax. See IRM 4.19.13.16.1.
The taxpayer replies with Schedule H,	N/A	Close the case "No Change" and send Schedule H to Receipt and Control for processing.
The taxpayer replies to Letter 4107 or Letter 4108 stating they are a church,	There is no indication of the church being exempt,	Send a quick note to the taxpayer. <b>Note:</b> If the church has only one employee who is the minister and they filed self-employment tax on their personal tax return, then the church does not have to file a return.
The taxpayer replies with Form 940,	And is taking the state credit, but no Form 940-B was submitted,	Send a quick note. See IRM 4.23.26.10, FUTA Certification.

4.23.26.5  
(01-26-2022)

#### Second Contacts

- (1) If no response to Letter 4107, issue Letter 4108 with proposed examination report (Form 2504-S, Form 4666, Form 4667 and/or Form 4668) Send Form 13683 and Form 886-A, Explanation of Items. Include Form 12203, Publication 5146 and Publication 5 as enclosures with Letter 4108.

**Note:** Only include Form 12203 if proposed tax adjustments or other changes total \$25,000 or less.

- (2) Input Social Security and Medicare wages/TIPS from IRPTR document.

- (3) Input Federal Income Tax Withholding from IRPTR document.
- (4) Input timely deposits.
- (5) Filed returns not under exam must be input. Do not include quick assessment or over reported federal income tax withholding.
- (6) Remove FUTA wages when not being pursued.
- (7) Document the actions taken in the Case History.
- (8) POA must be on file for all periods under examination to receive notices. See IRM 4.19.13.9, Power of Attorney and Other Third-Party Authorizations.

**Note:** The maximum wage base limitation for Social Security wages may change each year. See the instructions for the Form 941/Form 944 for the tax year being worked.

- (9) Letters mailed on cases from Campus Correspondence Examination inventory will include the appropriate Business Unit corporate toll-free number, "Tax Examiner" as the person to contact, and the site-specific identification number.

4.23.26.6  
(01-26-2022)  
**Complete Form 13496-A  
Certification**

- (1) The SFR program was developed to contact taxpayers who have not filed tax returns voluntarily and for whom income information is available to substantiate a significant tax liability. IRC 6020(b) grants the IRS the authority to create a tax return for the taxpayer if the taxpayer fails to file the return by the time prescribed or files a false or fraudulent return.
- (2) IRC 6020(b) provides that a tax return is good and sufficient for all legal purposes. However, the 6020(b) return is not treated as a tax return filed by the taxpayer. Form 13496-A, IRC Section 6020(b) Certification for Employment Tax Returns is part of the SFR Employment Tax case file to establish that IRC 6020(b) criteria are met in order that the Failure to Pay (FTP) penalty under IRC 6651(a)(2) will be sustained in court. Be aware of the following:
  - IRC 6020(b) tax return does not start the statute of limitations on an assessment.
  - IRC 6020(b) tax return does not stop the FTP penalty.
  - Form 13496-A is an "internal use only" form and should not be sent to the taxpayer.
  - Form 13496-A does not need to be completed when a case is closed "No Change" or a delinquent return was received.
- (3) Whenever the examiner revises a report of proposed adjustments that increases the total tax liability of the taxpayer (without regard to whether or not the revised report is reissued to the taxpayer), a recertification is required on another Form 13496-A dated on or after the date of the revised report.
- (4) If the report of proposed adjustments involves more than one tax period, a separate Form 13496-A for each tax period is created and attached to a copy of the report.
- (5) Refer to IRM 20.1.2.3.10.2, Processing When Deficiency Procedures Do Not Apply.

4.23.26.7  
(01-26-2022)

**Undeliverable Mail**

- (1) Research IDRS for a current address as per IRM 4.19.13.15. Clearly document the case history with the actions taken and research.
- (2) Follow the table below for actions to take when receiving undeliverable ETNF letters:

If	And	Then
The second contact has not been sent,	Research indicates there is a more current address,	Send undeliverable Letter 4107, Letter 4108 with attachments and Form 8822-B to the more current address. Allow 30 days for response and purge after 45 days.
The second contact has not been sent,	Research indicates the address on file is the most current and no new address is found,	Classified waste the undeliverable Letter 4107. Send Letter 4108 with attachments to the address on file. Allow 30 days for response and purge after 45 days.
The second contact has been sent,	Letter 4107 is returned as undeliverable, <b>and</b> research indicates there is a more current address,	Send undeliverable Letter 4107, copy of Letter 4108 and attachments, and Form 8822-B to the more current address. Allow 30 days for response.
The second contact has been sent,	Letter 4108 is returned as undeliverable, <b>and</b> research indicates there is a more current address,	Send undeliverable Letter 4108 with attachments and Form 8822-B to the more current address. Allow 30 days for response.
The second contact has been sent,	Letter 4107 and Letter 4108 are returned as undeliverable, <b>and</b> research indicates there is a more current address,	Send undeliverable Letter 4107 & Letter 4108 and attachments, and Form 8822-B to the more current address. Allow 30 days for response.

If	And	Then
The second contact has been sent,	Letter 4107 and/or Letter 4108 are returned as undeliverable, <b>and</b> research indicates the address on file is most current and no new address is found,	Classified waste the undeliverable Letter 4107 and/or Letter 4108. Default the case after the normal second contact 45 day suspense period.

4.23.26.8  
(01-26-2022)  
**Closures**

- (1) If taxpayers do not respond to the exam, close case default after Day 46. When the taxpayer responds, refer to IRM 4.23.26.4, Employment Tax Non-Filer Responses. Use the appropriate Disposal Code (DC) when closing the case:
  - DC 01 - No Change with Adjustment
  - DC 02 - No Change
  - DC 03 - Agreed before Letter 4108
  - DC 04 - Agreed after Letter 4108
  - DC 08 - Default
- (2) On secondary tax periods, Priority Code 9 is not required on Business Master File (BMF) cases. See IRM 4.4.12.5.19, FTP for SFRs, paragraph (2).
- (3) Refer to IRM 4.4.12, Examined Closings, Surveyed Claims and Partial Assessments, for further closing guidance.
- (4) Input TC 971/057 on all secondary tax periods.
- (5) Input TC 971/282 to set Assessment Statute Expiration Date (ASED) when return is received.

4.23.26.9  
(01-26-2022)  
**Penalties**

- (1) An SFR IRC 6020(b) report must be prepared before penalties can be considered. Penalties to be considered:
  - Failure to Deposit (FTD) penalty IRC 6656 – Refer to IRM 20.1.4, Penalty Handbook, Failure to Deposit Penalty.
  - Failure to File (FTF) penalty IRC 6651(a)(1) - Refer to IRM 20.1.2, Penalty Handbook, Failure to File/Failure to Pay Penalties.
- (2) Failure to Pay penalty IRC 6651(a)(2) and interest is generated after the closing of examination. If tax is full paid, FTD penalty, FTF penalty, FTP penalty or interest will not generate. Refer to IRM 20.1, Penalty Handbook.

4.23.26.9.1  
(01-26-2022)  
**Failure to Deposit  
Penalty (TC 180)**

- (2) Tiered penalty assessments for ETNF only apply to Form 940, Form 941, Form 943, Form 944 , and Form 945. The additional penalty is assessed on TC 300 adjustments that are paid late. See IRM 20.1.4.17, 15 Percent 4th Tier Penalty.

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**Note:** Refer to IRM 20.1.4.6 for De Minimis Exception to Deposit Requirements and IRM 20.1.4.9 for Form 940 Deposit Rules.

- (3) Use the “ETNF 5Percent” IAT-GII tool to assess the 4th tier 5% penalty.
- (4) If the “ETNF 5Percent” IAT-GII tool cannot be used to assess the 4th tier 5% penalty, you will need to manually compute the penalty, using the “4th Tier 5% FTD Penalty Tool.” This tool is an Excel file that will be saved to the RGS case file for the primary tax period, see IRM 4.23.26.12.
- (5) IRM 20.1.4.21.7 and IRM 20.1.5.2.3 require managerial approval for a manually computed FTD penalty. Managerial approval can be documented in the Correspondence Examination Automation Support (CEAS) system with a non-action note per IRM 20.1.5.2.3.1. Input the CEAS non-action note on the primary tax period. Suggested language for the CEAS non-action note is “Approval for assessment of 5% FTD penalty” with the applicable tax periods noted.
- (6) Follow the procedures below to manually assess the penalty:



If	Then
The FTD penalty should be assessed at case closing	<ol style="list-style-type: none"> <li>1. Calculate TC 180 for 10 percent of the TC 300 amount minus total timely payments to be input on Form 5344.</li> <li>2. At closing input an IDRS monitoring control on TXMOD using the "Control Base Actions" IAT-GII tool and follow up after 46 days.</li> <li>3. If the taxpayer does not pay additional TC 180 is necessary.</li> <li>4. Total all payments made TC 300 amount.</li> <li>5. Multiply the amount in Step 4 by 5 percent.</li> <li>6. Input the amount from Step 5 as the TC 180 amount to assess the tiered penalty. Use Hold Code "0" and Penalty Reason Code "011." The adjustment will be a non-source document. Close the monitoring control base.</li> </ol> <p><b>Note:</b> TC 290/291 may affect the penalty calculation. Be sure to add or subtract adjustments from TC 290/291.</p>
The TC 300 amount is full paid	Close the monitoring control base and do not assess the additional 5 percent penalty.
The FTD penalty should not be assessed at closing	Input a TC 180 for zero on Form 5344.

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If	Then
The FTD penalty needs to be abated in full or part due to calculation error	Input a TC 181 for the appropriate amount, use Penalty Reason Code "045."  <b>Note:</b> If all or part of the originally assessed TC 180 should be abated, also check to see if TC 160 was correctly calculated.

4.23.26.9.2  
(01-26-2022)  
**Failure to File Penalty  
(TC 160)**

- (1) The FTF penalty rate to be assessed at closure is 22.5 percent. Follow the procedures below:

If	Then
The FTF penalty should be assessed at case closing	Calculate TC 160 for 22.5 percent of the TC 300 amount minus total timely payments to be input on Form 5344
The FTF penalty should not be assessed at closing	Input a TC 160 for zero on Form 5344.
The FTF penalty needs to be abated in full or part due to calculation error	Input a TC 161 for the appropriate amount, use Penalty Reason Code "045."

4.23.26.9.3  
(01-26-2022)  
**Request for Penalty  
Relief**

- (1) The initial request for relief may occur either during or after an examination.
- (2) Refer to IRM 20.1.1.3, Criteria for Relief from Penalties, as a resource guide for the non-assertion of penalties due to Reasonable Cause (RC).
- (3) If the taxpayer is entitled to penalty relief, complete RC penalty lead sheet and document workpapers that reasonable cause was considered, and how reasonable cause was established.
- (4) If the taxpayer is not entitled to penalty relief, complete RC penalty lead sheet and document workpapers that reasonable cause was considered and why reasonable cause does not apply.

4.23.26.10  
(01-26-2022)  
**FUTA Certification**

- (1) The Federal Unemployment Tax Act provides for cooperation between the federal and state governments in the establishment and administration of unemployment insurance programs. Under this dual system, the employer is subject to a payroll tax levied by the federal and state governments.
- (2) There are currently 53 participating state level entities, which include the 50 states, the District of Columbia, Puerto Rico, and the U.S. Virgin Islands.

- (3) The taxpayer may be allowed a maximum credit of 5.4 percent against the FUTA tax of 6.0 percent for payments made to the state. If the state receives payments after the due date (plus extensions) for the Form 940, the employer is allowed 90 percent of the credit that would have been allowed had the payments been timely. An employer's credit will also be reduced if the employer paid wages that are subject to the unemployment tax laws of a credit reduction state.
- (4) If state credit is filed on Form 940, see table below:

If	Then
ETNF is authorized to send the Form 940-B to state,	E-fax the state Form 940-B and suspend for 5 days for response.
ETNF is not authorized to send the state certification or did not receive a response from the state,	Send taxpayer a quick note requesting Form 940-C and suspend for 15 days for response.
The state or taxpayer sends verification of the state credit,	Complete FUTA worksheet to determine state eligibility credit.

4.23.26.11  
(01-26-2022)  
**Signatures**

- (1) Return information on TRDB is considered a signed return.
- (2) An unsigned return is not a valid return. A faxed signature is acceptable.
- (3) Business returns must be signed by an authorized individual. See the table below for the authorized persons to sign the return for each type of business entity:

Business Entity Type	Individual authorized to sign the return
Sole Proprietorship	The business owner
Corporation (including a Limited Liability Company (LLC) treated as a corporation)	The president, vice president, or other principal officer duly authorized to sign
Partnership (including an LLC treated as a partnership) or unincorporated organization	A responsible and duly authorized partner, member, or officer having knowledge of its affairs
Single-member LLC treated as a disregarded entity for federal income tax purposes	The owner of the LLC or a principal officer duly authorized to sign
Trust or estate	The fiduciary

**Note:** Forms may be signed by a duly authorized agent of the taxpayer if a valid power of attorney has been filed.

- (4) Businesses may also use an alternative signature method. Corporate officers or duly authorized agents may sign forms by rubber stamp, mechanical device, or computer software program. Authorized individuals include:

- Secretary
- Accountant
- Bookkeeper

4.23.26.12  
(01-26-2022)  
**Case Assembly**

- (1) All documents must be saved electronically in RGS as a case file document. All documents will be saved at the time of creation. Letter 4107 will be created and attached in RGS upon initial contact. In most instances, BLP will issue Letter 4107 and attach in RGS, but in certain circumstances it may be necessary for the campus to perform these actions. Form 13496-A will be created and saved at closing.
- (2) To create documents in PDF format from SETA, print the documents in PDF format by changing the default printer setting to "Adobe PDF." These PDF documents can be saved to the RGS case file.
- (3) If more than one tax period is being examined, the last quarter of Form 941, Form 944, or Form 943 being examined is considered the "primary tax period." All other tax periods are considered "secondary tax periods."
- (4) The following documents must be saved in RGS as part of the primary tax period case:

- Form 5344, Examination Closing Record
- Form 13496-A, IRC Section 6020(b) Certification for Employment Tax Returns

**Note:** If case is closing as a "No Change" or if the taxpayer filed a return, Form 13496-A is not required.

- Letter 4108 packet (if issued), which includes Letter 4108, Form 13863, Form 886-A, Form 2504, Form 4666, Form 4667, and/or Form 4668.
- Letter 4107
- Case History Sheet
- IRPTR for each tax year
- W-2 sorter
- Partial Form 5344(if applicable)
- FUTA worksheet (if applicable)
- Quick note (if applicable)
- Undeliverable quick note (if applicable)
- Copy of 4th Tier 5% FTD Penalty Tool (if applicable)

- (5) The following documents must be saved in RGS to the secondary tax periods:

- Form 5344, Examination Closing Record
- Form 13496-A, IRC Section 6020(b) Certification for Employment Tax Returns

**Note:** If case is closing as a "No Change" or if the taxpayer filed a return, Form 13496-A is not required.

- Report used to close the case: Form 2504, Form 4666, Form 4667, and/or Form 4668 (if applicable)
- Case History Sheet
- Partial Form 5344 (if applicable)

- FUTA worksheet (if applicable)

- (6) A closing packet will be sent to Files that includes a printed copy of Form 5344, Examination Closing Record, for every tax period. All original returns should be attached to the appropriate Form 5344. No other documents are needed in the closing packet because documents will be saved to RGS.

4.23.26.13  
(01-26-2022)  
**Identity Theft - BMF  
Accounts**

- (1) IRM 25.23.9.5, Identity Theft Case Building - BMF, provides Servicewide guidance on BMF Identity Theft (IDT) issues, including documentation and actions required for general processing of BMF IDT claims.
- (2) See IRM 25.23.9.2, Business Masterfile (BMF) Identity Theft - Overview, for general information about BMF identity theft.
- (3) BMF entity types include corporations, partnerships, estates, trusts, exempt organizations, or government entities.
- (4) Follow IRM 25.23.10, Compliance Identity Theft Case Processing, for functional guidance regarding controls, work paper documentation, acknowledgement, etc., unless noted otherwise below.

**Note:** Use Letter 5316-C, BMF IDT Acknowledgement, and Letter 5317-C, BMF Identity Theft Request for Information or Closing Letter, instead of Letter 5064-C, ID Theft In-Process, to acknowledge receipt of the documentation and closing letter.

- (5) BMF IDT indicators are not applied until the IDT has been confirmed. Refer to IRM 25.23.9.4, BMF Identity Theft Research (Inquiry received via paper or phones), and IRM 25.23.9.6.1, Allegation or Suspicion of BMF Identity Theft - TC 971 AC 522 IDTCLM.
- (6) Follow normal controls until the IDT allegation has been verified. Once verified, open TXMOD controls using "TPPI "as the category code.
- (7) Account corrections will be performed within the Frivolous Return Program (FRP) team unless there is a lost refund. Cases meeting the lost refund criteria will be referred to Designated Identity Theft Adjustment in accordance with IRM 4.19.13.27, Campus Exam Identity Theft.
- (8) If the identity theft is substantiated, include an apology as part of the Letter 5317-C, BMF ID Theft Interim Closure, if a CP72 or Letter 3176 was issued.
- (9) Abate any penalties assessed based upon the identity theft return and remove all information on the taxpayer from the FRP Master Database.

**Note:** Managerial approval is not required to abate a frivolous penalty when a penalty was asserted based upon a return filed that has been deemed identity theft. Penalty abatement is required on all cross-reference accounts, if applicable.

- (10) If the taxpayer does not prove identity theft, a determination can't be made using internal research tools (IRS identified), or provides information appearing to be fraudulent indicated by the same signature on the identity theft form and the tax return submitted, issue Letter 105-C disallowing the claim and reverse

the IDT indicator in accordance with IRM 25.23.4.18.1, General IDTVA Letter Procedures. Continue processing the frivolous filing following normal procedures.

**Note:** Reverse any identity theft indicators when no identity theft occurred. Refer to IRM 25.23.9.6.5, Reversing BMF Identity Theft Indicators.

- (11) Once all actions have been taken, remember to close the identity theft issue. Refer to IRM 25.23.9.6.3, Closing BMF Identity Theft Issues - TC 971 AC 522 CLSIDT.

4.23.26.14  
(01-26-2022)  
**Partials**

- (1) For Form 941, Form 943, Form 944, or Form 945, if taxpayer's wages do not match Form W-2 wages, take the following actions:
1. Complete Form 5344 to input the partial and process the return as filed.
  2. Input the wages and federal income tax withholding reported on return(s) in the database.
  3. Send quick note, revised report for the unreported wages and IRPTR.
  4. Save and rename Form 5344 in RGS as "Form 5344 - Partial."
  5. Input TC 971/282 to set the ASSED on TXMOD.
- (2) For Form 940, if the taxpayer's taxable wages do not match Form W-2 taxable wages, they are not able to send Form 940-B to the state agency, or are not eligible for state credit, take the following actions:
1. Complete Form 5344 to input the partial and process the return as filed.
  2. Adjust FUTA wages on database to reflect the higher of FUTA wages reported on return or IRPTR.
  3. Send quick note and revised report for taxable wages at the full tax rate.
  4. Save and rename Form 5344 in RGS as "Form 5344 - Partial."
  5. Input TC 971/282 to set the ASSED on TXMOD.

4.23.26.15  
(01-26-2022)  
**Taxpayer Advocate  
Service (TAS) Cases**

- (1) Taxpayers contact TAS for assistance in resolving problems when they:
- Have been unsuccessful in resolving them through normal channels,
  - Are experiencing economic harm, or
  - Believe an IRS system or procedure is not working as it should.
- (2) For information on TAS cases, refer to IRM 4.19.13.25, Taxpayer Advocate Services (TAS) Procedures.

4.23.26.16  
(01-26-2022)  
**General Information for  
Reconsiderations**

- (1) Campus Employment Tax Non-filer Program (PBC 296 and PC 0453) are worked by the Cincinnati Exam Reconsideration Team.
- Note:** The Exam Classification team works PBC 212 and all other BMF audit reconsideration cases, per IRM 21.5.10.4.3(2).

4.23.26.16.1  
(01-26-2022)  
**Form 3870 Request for  
Adjustment**

- (1) When a case is being worked by the field, the revenue officer will submit a Form 3870, Request for Adjustment. These cases will be treated as priority cases.
- (2) These cases will be controlled only on IDRS. Follow the table below to process the Form 3870:

If	Then
The Form 3870 includes information that will allow the examiner to accept the return and adjust the account accordingly,	Input a TC 29X. Adjust the penalties according to IRM 20.1.
The Form 3870 does not include enough information to resolve the discrepancy,	Contact the preparer of the Form 3870 to request the additional information needed to resolve the discrepancy and suspend the case for 30 business days.
The information is received,	Process the case using the procedures above.
The information is not received,	Reject the case back to the revenue officer and input "REJRODOC" in the activity field on IDRS.

4.23.26.16.2  
(01-26-2022)

#### Controlling the Case

- (1) Per Policy Statement P-21-3, if the taxpayer submits an original return in response to a substitute for return that was prepared, this does not meet the definition of correspondence. However, if the taxpayer submits correspondence with the return, then it meets Action 61 Guidelines. See IRM 21.3.3.2, What is the Definition of Correspondence? - *Policy Statement P-21-3* Exclusion List.
- (2) Stamp the return with date received in the Exam Operation.
- (3) Control the earliest module on IDRS.
- (4) If Policy Statement P-21-3 applies, then an interim letter must be sent and subsequent follow-up interim letters must be sent.

4.23.26.16.3  
(01-26-2022)

#### Examiner Procedures

- (1) The following subsections explain the procedures to be utilized by tax examiners.

4.23.26.16.3.1  
(01-26-2022)

#### Unsigned Return

- (1) Verify the income and withholding reported on the Forms W-2 and the returns using Command Code IRPTRI. If there is a discrepancy, this must be addressed at the same time the tax examiner attempts to secure the signature.
- (2) If the returns are unsigned and a phone number is available, make one attempt to contact the taxpayer to secure the signature per IRM 4.23.26.16.3.4, Telephone Contact. If no phone number is available, send Letter 21-C, Employment Tax Return Incomplete for Processing: Form 941, 943, 944, 945, CT-1, and request the signature for each unsigned return. Suspend for 45 days. If there is no response to Letter 21-C, treat as a no consideration and issue appropriate closing letter. If signature requirement is secured, see IRM 4.23.26.16.3.2, Signed Return.

4.23.26.16.3.2  
(01-26-2022)

#### Signed Return

- (1) If returns are signed or the taxpayer provided a signature in response to Letter 21-C, verify that the wages and withholding reported on the returns matches the Forms W-2 on file using Command Code IRPTRI.
- (2) If the returns report wages or withholding more than the Forms W-2 on file, accept the returns as filed and make the assessment as reported on the



returns. Send the taxpayer the appropriate closing letter letting them know the returns reported more income than the Forms W-2 on file.

- (3) If the returns report wages or withholding less than the Forms W-2 on file and a phone number is available, make one attempt to contact the taxpayer to discuss the discrepancy between the Forms W-2 and the signed returns per IRM 4.23.26.16.3.4, Telephone Contact. If no phone number is available, send the appropriate closing letter.

**Note:** If one of the returns is reporting more income and withholding than what is assessed, make the additional assessment for that module and address this with the taxpayer. A signed return reporting more income for that specific form and tax period is a valid return and the correct tax for that module must be assessed on that module. **Update the ASED as necessary using TC 971/282.**

#### 4.23.26.16.3.3 (01-26-2022)

##### Closing Procedures

- (1) If the returns are accepted and signed, input TC 29X to adjust the account using the appropriate Item Reference Number/Credit Reference Number. Adjust any penalties that were or should be assessed per IRM 20.1, Penalty Handbook. Close the applicable open IDRS control base.
- (2) If the returns are not accepted due to a missing signature, one phone contact should be attempted and documented in the workpapers. If a signature is not obtained, input TC 290 for zero. If there is no balance due, send a Letter 105-C explaining the issue to the taxpayer. If there is a balance due, send a Letter 916-C explaining the issue to the taxpayer.
- (3) If the returns are not accepted because the reported wages or withholding are less than the Forms W-2 on file, input TC 290 for zero. If there is no balance due, send a Letter 105-C explaining the issue to the taxpayer. If there is a balance due, send a Letter 916-C explaining the issue to the taxpayer.
- (4) If the returns are not accepted because the reported wages or withholding are more than the Forms W-2 on file, assess the additional tax on those modules. Input a TC 290 for zero on the other modules that were reporting less than was assessed. Send the taxpayer Letter 916-C explaining the issue to them.

**Note:** Update the ASED as necessary using TC 971/282.

#### 4.23.26.16.3.4 (01-26-2022)

##### Telephone Contact

- (1) If the taxpayer provides a phone number, the examiner must make one phone call to secure missing information or clarify an unresolved issue related to the reconsideration request before disallowing in full or in part due to lack of information.
- (2) The examiner must review the case file before calling the taxpayer so they can advise the taxpayer of all return issues and all documentation needed. Examiners will document the workpapers with the taxpayer's phone number, date and time of contact. See IRM 4.13.3.9, Telephone Contact.

#### 4.23.26.16.3.5 (01-26-2022)

##### Replies to Disallowance Letters (105-C, 106-C and 916-C)

- (1) If the taxpayer submits additional information that would result in accepting the returns as filed, check that the returns are signed and report all wages and withholding.



- (2) If the taxpayer submits the same information or still does not send what is required, send Letter 916-C. Input TC 290 for zero.

4.23.26.16.4  
(01-26-2022)

#### Statute of Limitations

- (1) The Internal Revenue Code provides that the IRS will assess tax, make refunds or credits, and collect taxes within specific time limits. These limits are known as the Statutes of Limitations. Examiners must be aware of these limitations and the necessary steps required to be taken when these limitations are encountered.
- a. Most of the time, the reconsideration request is for a tax decrease. The examiner may be making adjustments resulting in an overpayment and must determine if the taxpayer is entitled to receive a refund of the overpayment based on the Refund Statute Expiration Date (RSED). Generally, a claim for refund must be filed within three years from the date the original return was filed or two years from the date the tax was paid, whichever is later.
  - b. There may be multiple RSEDs that apply to a taxpayer's situation.
  - c. IRC 6513(c) states that employment tax returns reporting FICA tax or FITW for any period ending with or within a calendar year filed before April 15 of the succeeding calendar year are considered filed on April 15 of that succeeding calendar year.
  - d. IRC 6513(c) states that FICA tax or FITW paid during any period ending with or within a calendar year before April 15 of the succeeding calendar year is considered paid on April 15 of that succeeding calendar year.
  - e. If no return was filed, the claim may be allowed if filed within 2 years from the date of payment(s). See IRM 25.6.1.10.2.7, Claims for Credit or Refund – General Time Period for Submitting a Claim, for guidance.
  - f. A claim or amended return is timely if received or postmarked within 3 years of the received date of the original return or within two years of the date the tax is paid. See IRM 25.6.1.10.2.7, Claims for Credit or Refund – General Time Period for Submitting a Claim and IRM 25.6.1.5, Basic Guide for Processing Cases with Statute of Limitations Issues, for guidance.
- (2) If an adjustment is made to a taxpayer's account and the result is an overpayment that cannot be refunded due to the RSED, the examiner must notify the taxpayer that an adjustment was made to the account, but due to the RSED the overpayment will not be refunded. Use Letter 105-C or Letter 106-C with the appropriate explanation. See IRM 25.6.1.10.1.1, Abatement Authority.

4.23.26.16.5  
(01-26-2022)

#### RSED on Original Return

- (1) Original returns claiming a refund filed by a taxpayer are valid claims.
- (2) Sending the notice of claim disallowance by registered or certified mail sets the beginning of the taxpayer's two-year period of limitations to file a refund suit under IRC 6532(a)(1).
- (3) This two-year period of limitations only applies when the taxpayer files a valid claim. The period of limitations under IRC 6532(a)(1) applies when the taxpayer submits a valid claim on the **original return**.
- (4) If the adjustments to tax or credits shown on a claim for refund or request for abatement have been posted to Master File, it is no longer a claim for refund or request for abatement.

- (5) When the taxpayer files a valid claim, but the examiner needs additional information to substantiate it, and the taxpayer fails to provide it, send the notice of claim disallowance. This will start the two-year refund suit period under IRC 6532(a)(1) period.
- (6) If the claim is defective or IRS can't determine the merits of the claim, and the taxpayer does not respond to a request for the information needed to validate the claim, the taxpayer has no basis for filing a refund suit.
- (7) Additional information provided after the RSED can be considered if final action has not been taken on the claim. However, information provided after the RSED cannot vary the facts or legal basis of a claim so as to constitute, in effect, a new claim. IRS may waive the requirement in its regulations as to the form and contents of a claim, but it cannot waive the requirement under IRC 6511 that a claim be submitted timely.
- (8) If a taxpayer submits a reconsideration request for reversal of an audit assessment or reversal of credits disallowed on the **original return** and a formal disallowance letter has not been sent, then the RSED is still open. See IRM 25.6.1.10.2.5.4, Reconsideration after the RSED, where Notice of Claim Disallowance not Sent, for additional information and instruction on how to input the adjustment when the RSED is expired.