



# MANUAL TRANSMITTAL

Department of the Treasury  
Internal Revenue Service

4.70.13

NOVEMBER 22, 2023

## EFFECTIVE DATE

(11-22-2023)

## PURPOSE

- (1) This transmits new IRM 4.70.13, TE/GE Examinations, Executing the Examination.

## MATERIAL CHANGES

- (1) The TE/GE Examinations process was created to provide a consistent and streamlined examination process across TE/GE.
- (2) This IRM was extracted from the Internal Guidance Memos (IGMs) and IRM sections tabled here:

IGM	IRM Section
TEGE-04-0920-0007, Modification of Department of Labor (DOL)/Pension Benefit Guarantee Corporation (PBGC) Referral Processes, dated September 24, 2020	IRM 4.7.1, Overview of Form 5500 Examination Procedures, dated February 25, 2022
TEGE-04-1220-0026, Requirement to Use Form 5773-A (Rev. 12-2020), and eliminating required use of Form 5772-A, dated December 14, 2020	IRM 4.71.3, Unagreed Form 5500 Examinations and EP Examinations Closing Agreements, dated March 18, 2022
TEGE-04-0221-0003, Interim Guidance on Letter Consolidation, dated February 2, 2021	IRM 4.71.5, Form 5330 Examinations, dated February 14, 2022
	IRM 4.71.6, Employee Plans Referrals, dated October 29, 2019
TEGE-04-0921-0015, Mandatory Actuarial Input for Examination Cases Involving Defined Benefit Plans, dated September 15, 2021	IRM 4.71.9, Statute Control Procedures, dated August 12, 2021
TEGE-04-0921-0018, Activity, Disposal, Source and Status Codes, dated September 28, 2021	IRM 4.71.10, Form 990-T Processing, dated October 20, 2019
TEGE-04-0222-0001, Miscellaneous Civil Penalty Case Procedures, dated February 7, 2024	IRM 4.71.17, Non-Return Unit Examinations, dated December 2, 2021
TEGE-04-0222-0006, Elimination of Requirement to Post Form 3198-A as a Separate Workpaper in RCCMS Office Documents Folder, dated February 23, 2022	IRM 4.71.19, Fast Track Settlement Procedures, dated October 28, 2019

TEGE-04-0322-0009, Interim Guidance on Fully Electronic (100% Paperless) Cases, dated March 15, 2022	IRM 4.71.25, EP Examinations Fraud Procedures, dated November 22, 2019
TEGE-04-0422-0013, TE/GE RCCMS Naming Convention, dated April 26, 2022	IRM 4.75.10, Exempt Organizations Examination Procedures, Exempt Organization Pre-contact Procedures, dated November 14, 2019.
TEGE-04-0522-0014, Interim Guidance on Establishment of Form 5330 Returns, dated May 3, 2022	IRM 4.75.11, On-Site Audit Guidelines, dated January 18, 2017
TEGE-04-0622-0025, Discontinue Using Paper Forms 895/895-EP, dated June 21, 2022	IRM 4.75.13, Issue Development and Conclusion, dated October 16, 2019
TEGE-04-0622-0026, Reporting Compliance Case Management System (RCCMS) Electronic Case Policy dated June 21, 2022	IRM 4.75.15, Closing Letters and Examination Reports, dated January 14, 2020
TEGE-04-0622-0027, Tax Exempt and Government Entities Examination Process, dated June 21, 2022	IRM 4.75.16, Case Closing Procedures, dated February 5, 2020
TEGE-04-0622-0018, Taxpayer Digital Communications Secure Messaging, dated June 23, 2022	IRM 4.75.22, EO Delinquent, Amended and Substitute for Return Procedures, dated November 7, 2019
TEGE-04-0722-0024, Fully Electronic (100% Paperless) Cases, dated July 13, 2022	IRM 4.75.35, Fraud and Abusive Transaction Procedures, dated August 10, 2020
TEGE-04-1122-0017, Interim Guidance on Certain Related Return Pickups, dated November 28, 2022	

## EFFECT ON OTHER DOCUMENTS

This obsoletes the IRM sections listed below:

IRM 4.71.1, Overview of Form 5500 Examination Procedures, dated February 25, 2022;  
 IRM 4.71.3, Unagreed Form 5500 Examinations and EP Examinations Closing Agreements, dated March 18, 2022;  
 IRM 4.71.5, Form 5330 Examinations, dated February 14, 2022;  
 IRM 4.71.6, Employee Plans Referrals, dated October 29, 2019;  
 IRM 4.71.9, Statute Control Procedures, dated August 12, 2021;  
 IRM 4.71.10, Form 990-T Processing, dated October 29, 2019;  
 IRM 4.71.17, Non-Return Unit Examinations, dated December 2, 2021;  
 IRM 4.71.19, Fast Track Settlement Procedures, dated October 28, 2019;  
 IRM 4.71.25, EP Examinations Fraud Procedures, dated November 22, 2019;  
 IRM 4.75.10, Exempt Organizations Examination Procedures, Exempt Organization Pre-contact Procedures, dated November 14, 2019;

IRM 4.75.11, On-Site Audit Guidelines, dated January 18, 2017;  
IRM 4.75.13, Issue Development and Conclusion, dated October 16, 2019;  
IRM 4.75.15, Closing Letters and Examination Reports, dated January 14, 2020;  
IRM 4.75.16, Case Closing Procedures, dated February 5, 2020;  
IRM 4.75.21, EO Special Examination Procedures, dated November 5, 2019;  
IRM 4.75.22, EO Delinquent, Amended and Substitute for Return Procedures, dated November 7, 2019;  
IRM 4.75.28, Discrepancy Adjustments, dated June 8, 2017;  
IRM 4.75.35, Fraud and Abusive Transaction Procedures, dated August 10, 2020;  
IRM 4.75.40, Employment Tax Audit Procedures, dated December 18, 2019;  
IRM 4.81.5, Tax Exempt Bonds (TEB) Examination Program and Procedures, Conducting the Examination, dated August 5, 2021;  
IRM 4.81.6, Closing Agreements, dated February 20, 2019;  
IRM 4.86.5, Indian Tribal Governments (ITG) Procedures, Conducting Indian Tribal Government Examination, dated December 15, 2020; and  
IRM 4.88.1, Examination Issues Pertaining to ITG Cases, dated December 10, 2021.

This section incorporates Internal Guidance Memos:

TEGE-04-0920-0007, Modification of Department of Labor (DOL)/Pension Benefit Guarantee Corporation (PBGC) Referral Processes, dated September 24, 2020;  
TEGE-04-1220-0026, Requirement to use Form 5773-A (Rev. 12-2020), and eliminating required use of Form 5772-A, dated December 14, 2020;  
TEGE-04-0221-0003, Interim Guidance on Letter Consolidation, dated February 2, 2021;  
TEGE-04-0621-0009, Cases Protested to Appeals through the EO Closing Unit, dated June 22, 2021;  
TEGE-04-0921-0015, Mandatory Actuarial Input for Examination Cases Involving Defined Benefit Plans, dated September 15, 2021;  
TEGE-04-0921-0018, Activity, Disposal, Source and Status Codes, dated September 28, 2021;  
TEGE-04-0222-0006, Elimination of requirement to post Form 3198-A as a separate workpaper in RCCMS Office Documents folder, dated February 23, 2022;  
TEGE-04-0422-0013, TE/GE RCCMS Naming Convention, dated April 26, 2022;  
TEGE-04-0522-0014, Interim Guidance on Establishment of Form 5330 Returns, dated May 3, 2022;  
TEGE-04-0622-0025, Discontinue using paper Forms 895/895-EP, dated June 21, 2022;  
TEGE-04-0622-0026, Reporting Compliance Case Management System (RCCMS) Electronic Case Policy dated June 21, 2022;  
TEGE-04-0622-0027, Tax Exempt and Government Entities Examination Process, dated June 21, 2022;  
TEGE-04-0622-0018, Taxpayer Digital Communications Secure Messaging, dated June 23, 2022;  
TEGE-04-0722-0024, Fully Electronic (100% Paperless) Cases, dated July 13, 2022;  
TEGE-04-1122-0017, Interim Guidance on Certain Related Return Pickups Dated November 28, 2022;  
TEGE-04-1122-0035, Interim Guidance on Certain Accepted as Filed Returns, dated November 28, 2022; and  
TEGE-04-0123-0003, Interim Guidance on Use of Standardized Letters and Forms, dated January 10, 2023.

## **AUDIENCE**

Tax Exempt and Government Entities

Directors, Tax Exempt and Government Entities



4.70.13

Executing the Examination

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4.70.13.1  
(11-22-2023)  
**Program, Scope and Objectives**

- (1) **Purpose:** IRM 4.70.13, Executing the Examination, provides guidelines and techniques for TE/GE examiners to use during the execution phase of the examination. The execution phase of the TE/GE Examination Process has three separate and distinct steps:

- Taxpayer Contact and Information Gathering
- Gathering Facts, Applying Law, and Developing Issues, and
- Issue proposal

**Note:** Within each step there are basic steps that will be discussed within IRM 4.70.13.

- (2) **Audience:** This IRM provides procedures for examiners, managers, and support staff in TE/GE examination functions.
- (3) **Policy Owner:** The Directors, Employee Plans and Exempt Organization/ Government Entities.
- (4) **Program Owner:** The Directors, Employee Plans Examinations, Exempt Organizations Examinations, and Government Entities.

4.70.13.1.1  
(11-22-2023)  
**Background**

- (1) This IRM provides an overview of the responsibilities that examiners should understand and apply in the performance of their duties in executing the examination phase of the TE/GE examination process.
- (2) Examination of exempt organizations will be conducted to determine whether such entities meet continued qualification of exempt status, compliance and the causes of noncompliance with the tax laws and applicable resolutions.
- (3) Examination of employee benefit plans is regulatory, with emphasis on continued qualification of employee benefit plans. The IRS selects and examines returns to:
  - a. Promote the highest degree of voluntary compliance with the tax laws governing plan qualification.
  - b. Determine the extent of compliance and the causes of noncompliance with the tax laws and applicable resolutions.
  - c. Determine whether such plans meet the applicable qualification requirements in operation.
- (4) Examination of governmental entities will be conducted to determine whether such entities are in compliance with their employment tax filing, reporting, and payment requirements.
- (5) The Tax Exempt Bonds Examination Program is to identify and correct non-compliance in tax-advantaged bonds.
- (6) TE/GE Examiners should refer to IRM 4.23.3, Exam Program and Procedures, when examining employment tax cases in addition to this IRM section.
- (7) The procedures contained in this IRM are not intended to be all inclusive. Examiners must use their professional judgment in completing their exam cases and other compliance activities.

4.70.13.1.2  
(11-22-2023)  
**Authority**

- (1) Examinations are conducted according to Policy Statement 1-236 (IRM 1.2.1.2.36), Fairness and Integrity in Enforcement Selection, and the Taxpayer Bill of Rights per IRC Section 7803(a)(3). The Taxpayer Bill of Rights (TBOR) lists rights that already existed in the tax code, putting them in simple language and grouping them into 10 fundamental rights. Employees are responsible for being familiar with and acting in accord with taxpayer rights. See IRC 7803(a)(3), Execution of Duties in Accord with Taxpayer Rights. For additional information about the TBOR, see <https://www.irs.gov/taxpayer-bill-of-rights>.
- (2) Policy Statement 4-4 (IRM 1.2.1.5.2) provides package audit requirements, that:
  - a. Income tax examinations will include consideration of employment tax liability.
  - b. If warranted, employment tax returns will be examined concurrently with the income tax examination.
  - c. The examination of any return will include a check for filing other federal tax or information returns required to be filed.
- (3) Under Policy Statement 4-117 (IRM 1.2.1.5.34), examiners and managers:
  - a. Have broad authority to consider and weigh conflicting information, data, and opinions.
  - b. Use professional judgement when applying examination standards for findings of fact and application of tax law to determine the correct tax liability.
  - c. Exercise authority to get the greatest number of agreements to tax determinations without sacrificing the quality or integrity of those determinations.
  - d. Resolve tax differences at the lowest level.
- (4) Policy Statement 4-119 (IRM 1.2.1.5.36) provides that the primary objective of the TE/GE program is regulatory, with emphasis on the continued qualification of exempt organizations and employee benefit plans, and continued compliance of governmental entities (federal, state, and local governmental entities, Indian tribal governments and tribal entities, and entities or organizations that issue tax advantaged bonds). The IRS selects and examines returns to:
  - a. Promote the highest degree of voluntary compliance with the statutes governing qualification of plans and exemption of certain types of organizations from tax.
  - b. Determine the extent of compliance and the causes of noncompliance with the tax laws by plans, organizations, and governmental entities.
- (5) IRC 7602 gives examiners the authority to:
  - a. Examine any books, papers, records or other data necessary to complete an examination (includes electronic media).
  - b. Issue a summons for information necessary to complete an examination.
  - c. Take testimony under oath to secure additional information needed.
  - d. Ask about any offense connected to administering or enforcing the Internal Revenue laws.
- (6) IRC 6201 - Assessment Authority, which falls under Chapter 63 - Assessment.

4.70.13.1.3  
(11-22-2023)  
**Responsibilities**

- (1) The Directors, EO/GE and EP, are the executives responsible for providing policy and guidance for field employees and ensuring consistent application of policy, procedures and tax law to effect tax administration while protecting taxpayers' rights. See IRM 1.1.23, Tax Exempt and Government Entities Division, for additional information.
- (2) The Directors, EO Examinations, GE, and EP Examinations reports to the Directors, EO/GE and EP respectively, and are responsible for the delivery of policy and guidance that impacts the field examination process. See IRM 1.1.23, Tax Exempt and Government Entities Division, for additional information.
- (3) All examiners must perform their professional responsibilities in a way that supports the *IRS Mission*. This requires examiners to provide top quality service and to apply the law with integrity and fairness to all.
- (4) Examiners and their managers should thoroughly acquaint themselves with the examination procedures and information contained in this IRM, as well as other resources.

4.70.13.1.4  
(11-22-2023)  
**Program Controls**

- (1) CP&C administers examination inventory control.
- (2) The FAC coordinates the assignment of examination inventory.
- (3) Two review groups make sure examiners conduct examinations per technical, procedural and administrative requirements:
  - a. Mandatory Review / Technical.
  - b. Special Review, see IRM 4.70.7, Special Review (SR) and Tax Exempt Quality Measurement System (TEQMS) Procedures.
- (4) In order to ensure a consistent level of managerial engagement in the process of making key strategic decisions during an exam, the examiner submits requests for approval by their manager through RCCMS.
- (5) The manager approves or rejects any request through RCCMS.
- (6) The IRS is fully committed to protecting the privacy rights of taxpayers and employees. Privacy laws are included in the IRC, the Privacy Act of 1974, the Freedom of Information Act, and IRS policies and practices. For more information about these laws, visit the *IRS Electronic Freedom of Information Act Reading Room*.
  - a. For questions about privacy, email *\*Privacy*.
  - b. For question about disclosure, email *\*Disclosure*.

4.70.13.1.5  
(11-22-2023)  
**Acronyms and Abbreviations**

(1)	<table><tr><th>Acronyms</th><th>Definitions</th></tr><tr><td>Audit Cap</td><td>Audit Closing Agreement Program</td></tr><tr><td>AIMS</td><td>Audit Information Management System</td></tr><tr><td>AMDISA</td><td>Audit Management Display Information System</td></tr><tr><td>ASED</td><td>Assessment Statute Expiration Date</td></tr></table>	Acronyms	Definitions	Audit Cap	Audit Closing Agreement Program	AIMS	Audit Information Management System	AMDISA	Audit Management Display Information System	ASED	Assessment Statute Expiration Date
Acronyms	Definitions										
Audit Cap	Audit Closing Agreement Program										
AIMS	Audit Information Management System										
AMDISA	Audit Management Display Information System										
ASED	Assessment Statute Expiration Date										

BMF	Business Master File
BMFOLI	Business Master File Online
CAS	Computer Audit Specialist
CC	Closing Code
CCR	Case Chronology Record
CP&C	Compliance Planning & Classification
DC	Disposal Code
DLN	Document Locator Number
EEE	Employee Benefits, Exempt Organizations, and Employment Taxes Office of Associate Chief Counsel
EIN	Employer Identification Number
EO	Exempt Organizations
EP	Employee Plans
FAC	Functional Assignment Coordinator
FIP	Financial Institutions & Products Office of Associate Chief Counsel
FTE	Failure to File
FTAP	Failure to Pay
GAAP	Generally Accepted Accounting Principles
GM	Group Manager
IGM	Interim Guidance Memo
IRC	Internal Revenue Code
IDR	Information Document Request
IDRS	Integrated Data Retrieval System
INOLES	Inquiry On-line Entity
IRM	Internal Revenue Manual
IRS	Internal Revenue Service
LB&I	Large Business and International
LUQ	Large, Unusual and Questionable Items
MF	Master File
MFT	Master File Tax
NMF	Non Master File
NRP	National Research Program

PDF	Portable Document Format
PII	Personally Identifiable Information
POA	Power of Attorney
RCCMS	Reporting Compliance Case Management System
SB/SE	Small Business and Self Employed
SOL	Statute of Limitations
SR	Special Review
SRS	Specialist Referral System
TC	Transaction Code
TE/GE	Tax Exempt and Government Entities
TEGEDC	TE/GE Division Counsel
TEFRA	Tax Equity and Fiscal Responsibility Act of 1982
TEQMS	Tax Exempt Quality Measurement System
TIN	Taxpayer Identification Number
TP	Taxpayer
UBI	Unrelated Business Income
UBIT	Unrelated Business Income Tax
W&I	Wage & Investment

4.70.13.1.6  
(11-22-2023)

#### Related Resources

- (1) Examiners should consult the Knowledge Management *Virtual Library* to ensure proper issue development and consistent application of the law.
- (2) To ensure that the IRM is always current, future revisions of the IRM will refer you to one of the books below for the correct codes to use in lieu of specifying an activity code, disposal code, source or status code. The IRM will specify the section of the document to reference and the type of activity, disposition, source and status code to look up.
  - Document 6379, Information Systems Codes FY 2023 Quick Reference for EO Employees
  - Document 6476, Information Systems Codes FY 2023 Quick Reference for EP Agents/Specialists
  - Document 11308, Information Systems Codes FY 2023 for GE Employees

**Note:** You can also get the current version of the documents at our *Business Systems Planning* page.

4.70.13.2  
(11-22-2023)

**Overview of Execution Phase**

- (1) Stages of issue development include determining the facts, applying the law to those facts, and understanding the various tax or compliance implications of the issue. The parties will conduct interactive discussions, using the Information Document Request (IDR) process to secure relevant documents to develop the facts. Every effort should be made to resolve any factual differences. If required, Notices of Proposed Adjustment will be provided throughout this phase to present the government's legal position to the taxpayer. The entity or organization's response to these proposals will allow the examiner to gain an understanding of the entity or organization's position to facilitate issue resolution at the earliest appropriate point.
- (2) **Taxpayer Contact and Information Gathering:** Establish ground rules for the examination and answer questions about the process and explaining their rights. Determine if you need to expand the examination scope. Basic steps include:
  - a. Secure and process Form 2848, if applicable.
  - b. Explain the examination process and required publications, answer TP/POA questions.
  - c. Confirm exam protocol (mutual expectations).
  - d. Interview TP/POA
  - e. Tour facility, if applicable (RA only)
  - f. Review IDR responses
  - g. Analyze books and records; Assess internal controls
  - h. Use various tools (QuickBooks, Sage, Peachtree, etc.) to analyze and assess
  - i. Consider whether the exam plan issue(s) exist or whether there are new material issue(s). If new issues, get your manager's approval to pursue, then add the issues to RCCMS.
  - j. Determine if you'll need specialists such as an actuary, computer audit specialist, valuation specialist, or international specialist and submit SRS request, if applicable.
- (3) **Gather facts, apply the law, and develop issue(s):** Determine the compliance of identified issues and further develop other identified issues. Basic steps include:
  - a. Complete exam techniques: sampling, testing, verifying supporting documentation to develop potential issues
  - b. Research applicable tax law
  - c. Develop follow-up IDRs and establish due dates
  - d. Determine if you need help on the issue(s)
  - e. Review and use K-Net resources and tools
  - f. Review risk analysis with your manager
  - g. Assess whether there are new material issue(s) that warrant examination. If new issues, get your manager's approval to pursue, then add the issues to RCCMS
  - h. Document workpapers and CCR

4.70.13.2.1  
(11-22-2023)

**Place of Examination**

- (1) Examiners and their managers will determine, on a case-by-case basis, whether the examination is conducted via correspondence, at the taxpayer's place of business or the TP/POA's office. All decisions must be documented in the case file and, if the examination location is at a place other than the taxpayer's place of business, the group manager must sign or notate the CCR or e-mail the examiner concurrence with the location.



**Note:** There is no requirement on any examination that it be conducted at the taxpayer's place of business.

**Note:** Always determine where the books and records are located, even if the examination is conducted at an alternate location (such as the office of a representative).

- (2) Correspondence exams are those in which the taxpayer can readily mail information to resolve the questionable issues.

**Note:** If necessary due to complexity, geographical location, etc., the group manager may convert the correspondence exam to a field exam.

- (3) To determine whether the examination is conducted in the field or by correspondence, examiners and their managers consider factors such as the complexity of the taxpayer's books and records, geographical location, staff availability, and resources.
- (4) Regardless of the examination's location, the same examination procedures are performed.

## 4.70.13.3 (11-22-2023) Examination Techniques Used to Gather Information

- (1) Examiners use a variety of techniques to gather information including the following:
  - Interviews, see IRM 4.70.13.3.1.
  - Internal Controls, see IRM 4.70.13.3.2.
  - Tour of Business, see IRM 4.70.13.3.3.
  - Examination of Books and Records, see IRM 4.70.13.3.4.
  - Reconciliation of Books and Records, see IRM 4.70.13.3.5.
  - Failure to Maintain Records, see IRM 4.70.13.3.6.
  - Sampling Techniques, see IRM 4.70.13.3.7.
- (2) The examiner should use his/her professional judgment and manager's guidance and approval to determine the scope and depth of the examination, based on the information obtained and reviewed.

## 4.70.13.3.1 (11-22-2023) Interviews

- (1) A quality examination might require the examiner to conduct interviews. Examiners have the authority to take testimony as may be relevant to determine any return's correctness, make a return where none has been made, and determine the liability for any internal revenue tax (IRC 7602).
- (2) The goals of an interview are to:
  - a. Gather information about the taxpayer that isn't available from other sources (for example, financial history, business operations, books and records).
  - b. Obtain information needed to make informed judgments about the scope and depth of the examination (for example, taxpayer history and extent of internal controls)
  - c. Confirm reliability of books and records.
  - d. Obtain leads
  - e. Develop information.
  - f. Establish facts
  - g. Correctly resolve issues.

- (3) All EP large case examinations must include a Large Case Engagement Agreement that clearly identifies, in writing, the agreements made between the IRS and the Taxpayer. The Large Case Engagement Agreement is generated after the opening conference / initial interview. Follow procedures in IRM 4.70.11.14.1.3.2.2 to create a Large Case Engagement Agreement.
- (4) This section discusses planning, conducting and documenting interviews and the types of interviews that may be conducted during the examination.

4.70.13.3.1.1  
(11-22-2023)  
**Planning the Initial Interview**

- (1) The initial interview is an important part of the examination process.
- (2) Planning and organizing questions to ask in advance of the initial interview is as important as the initial IDR. The questions should be specific to the taxpayer under examination. Preparation gives you freedom to listen more carefully and proceed efficiently with the examination.
- (3) Use the information developed in the pre-contact analysis, which should include a thorough review of the case file, review of internal and external data, along with items noted in the documents you received and processed in the days leading up to the interview. Be prepared to modify the interview at any time up to and during the interview.

4.70.13.3.1.2  
(11-22-2023)  
**Formulating the Questions**

- (1) Base the questions on your observations during the pre-contact analysis and issues that you will develop. Write them down or outline them. List topics in their proper sequence. Leave enough space to jot down brief notes during the interview. Keep in mind that this doesn't limit the ability to ask additional questions. Be ready to ask for clarification or to follow up on responses.
- (2) Some main areas to cover are:
  - a. Representation
  - b. Publication Pub 1
  - c. History of the taxpayer
  - d. Relevant document modifications (plan, organizational, etc.)
  - e. Taxpayer operations
  - f. Internal controls
  - g. Pre-Contact Analysis and Required Filing Checks
  - h. Unrelated business income activities
  - i. Any identified issues
  - j. EP large case exams – areas of commitment listed in IRM 4.70.11.14.1.3.2.2, Commitments and Content of the Large Case Engagement Agreement

**Caution:** You can use pro forma interviews but customize them to fit the taxpayer under examination and make them open to follow-up questions.

- (3) At the start of any interview, ask about representation (if not already represented) and confirm the taxpayer's receipt of Publication 1. Ask if there are any questions about the examination process, their rights as outlined in Publication 1 or any other attachments and address any concerns.

**Note:** Publication 1 can be obtained at [www.irs.gov](http://www.irs.gov) and is required to be sent to the taxpayer with the initial appointment letter.

- (4) Suspend the interview if the taxpayer clearly states that he/she wishes to consult with a qualified representative and give the taxpayer reasonable time to secure representation (**IRC 7521(b)(2)**). You must strictly observe the taxpayer's right of consultation throughout the examination process and suspend and reschedule interviews.

**Exception:** IRC 7521(b)(2) doesn't apply to an interview initiated by administrative summons and can't be used to repeatedly delay or hinder the exam process.

- (5) Questions about the history of the taxpayer can either be general, such as asking for a complete history, or more pointed, discussing any items noted in an application, website or tax returns.
- (6) Plan to discuss whether any changes were made to the documents relevant to the examination that weren't already identified in the initial analysis and obtain explanations of any major changes.
- (7) Questions about the taxpayer's operations should include a general overview of the processes in place but also specific detail about the operations for the areas under examination.
- (8) IRM 4.70.13.3.2, Internal Controls, discusses the internal controls portion of the initial interview.
- (9) IRM 4.70.12.3.6, Required Filing Checks, provides information on required filing check procedures.
- (10) For any unrelated business activities, questions should focus on the six "W" questions: when, where, who, what, why and how.
- (11) If you need help developing questions, consult an assigned mentor, on-the-job instructor, or the Group Manager.

## 4.70.13.3.1.3 (11-22-2023) Conducting the Interview

- (1) IRC 7605(a) allows the Secretary to set the time and place of interviews as long as they are reasonable. In general, the IRS will determine if the interview is more appropriately conducted at an IRS office, a taxpayer or representative's location, or by telephone. 26 CFR 301.7605-1(d) states, in part, "A field examination will generally take place at the location where the taxpayer's original books, records and source documents pertinent to the examination are maintained. In the case of a sole proprietorship or taxpayer entity, this will usually be the taxpayer's principal place of business."
- (2) Holding the initial interview at the taxpayer's place of business enables you to better:
  - a. Use your time by having access to source documents where they are stored.
  - b. Familiarize yourself with the business operations by inspecting the premises.
  - c. Evaluate internal controls.
- (3) If holding the initial interview at the taxpayer's place of business is not a viable option (e.g., if the examiner's presence would disrupt the business operations), request an opportunity to conduct a walk-through of the business premises if

needed. You can schedule these visits prior to the start time of the business (e.g., before office hours at a doctor's office). See IRM 4.70.13.3.3, Tour of Business.

- (4) During an interview, it's important to create an environment where the taxpayer feels comfortable. Be friendly and professional. Establish rapport by:
  - a. Introducing yourself – provide all attendees with your name, contact information and employee ID number.
  - b. Explaining what to expect during the examination process.
  - c. Recognizing that the IRS exam is often a rare experience; the taxpayer may be nervous.
  - d. Being open, honest, and showing integrity.
  - e. Remaining calm and objective.
- (5) Conduct the interview with an individual who has sufficient knowledge and the ability to answer questions about the taxpayer, procedures in place and books/records for the area(s) of interest.
- (6) Without an administrative summons, you can't require a taxpayer to accompany his/her authorized representative to an examination interview (IRC 7521(c)). However, the taxpayer's voluntary presence at the interview can be requested through the representative to expedite the examination process. This does not affect your right to conduct an on-site inspection of the taxpayer's facility.
- (7) Use the following questioning techniques for an effective interview:
  - a. Plan the interview to address the items specific to the taxpayer under examination.
  - b. Ask clear, relevant, and objective questions.
  - c. Be direct, while maintaining a courteous, professional image.
  - d. Be receptive to all information volunteered, regardless of its nature. Listen carefully to responses and ask further questions about any responses that were inconsistent, vague or didn't fully answer your question.
  - e. Use open-ended questions so the taxpayer has to answer using full sentences rather than a mere "yes" or "no" response.
  - f. Research questionable items to know what questions to ask.
- (8) At a minimum, discuss the following items with the taxpayer:
  - a. Availability of requested books and records, if not already determined during the planning phase.
  - b. Explanation of the accounting system.
  - c. Internal controls
  - d. Description of operations during the year under examination to the present.
  - e. Issues identified during pre-contact analysis.
  - f. Items that come up during the interview that you didn't previously identify but may lead to examination issues if pursued.
- (9) IRC 7521(a) provides that taxpayers and IRS employees may audio record an "in-person" interview, provided that advance notice is given to the other party. The taxpayer must supply his/her own means of recording. The recording can be by tape, stenography, or other means at the taxpayer's own expense. The taxpayer or representative does not have the right to record a telephone

interview with or without the Service's knowledge. For further information, see IRM 5.1.12.3, Taxpayer Recording of Interviews.

## 4.70.13.3.1.4 (11-22-2023) Types of Interviews

- (1) **Initial Interview** — Hold the initial interview as soon as possible after you open a case. Your pre-contact analysis should include the preparation for the interview. See IRM 4.70.12.4, Examination Plan Development and Approval, for details on the pre-contact analysis.
- (2) **Subsequent Interview** — Hold subsequent interviews if: a. The taxpayer doesn't provide all the information requested. b. You need more detailed explanations. c. You need to review the examination progress. Your review should address information provided to date as well as outstanding information needed to complete the examination.
- (3) **Third-Party Interview** — You may need to interview third parties when the taxpayer doesn't or can't provide documentation about a transaction, deduction, or income item.
- (4) **Closing Conference** — You must hold a closing conference at the examination's conclusion:
  1. Discuss final conclusions with the taxpayer.
  2. Solicit agreement to any proposed adjustments.

**Note:** At the conclusion of the examination, you must advise the taxpayer and/or representative of all appeal rights, including the option of Fast Track Settlement, if available. (See IRM 4.70.14.3.3, Fast Track, for more details.)

## 4.70.13.3.1.5 (11-22-2023) Documenting Interviews

- (1) Equally important to asking sufficient questions during the interview is your fully documenting this information. Many other employees review the case file after you close it, especially if the examination is unagreed. Document the interview(s) so that an employee subsequently reviewing the file doesn't have questions. An adequately documented interview includes:
  - a. An examination pre-contact analysis addressing items specific to the taxpayer under examination.
  - b. Documentation giving a clear understanding of the nature of the taxpayer's history and operations.
  - c. Explanations of large, unusual or questionable (LUQ) items and a conclusion as to whether such explanations resolve the potential issues.
  - d. Description of books and records maintained and their availability.
  - e. Complete explanation of the taxpayer's accounting system and methods, including any changes.
  - f. Explanation of the taxpayer's internal controls.
  - g. For EP large case exams - areas of commitment listed in IRM 4.70.11.15.9.3.1, Commitments and Content of the Large Case Engagement Agreement.
- (2) Document in your CCR that the examination process and appeal rights were explained to the taxpayer.
- (3) If pertinent information is disclosed in the interview that you find necessary for the administrative record, put it in writing and mail it to the taxpayer/organization and POA.

4.70.13.3.1.6  
(11-22-2023)

### Documenting Interview Techniques

- (1) Use any of these five methods to document your interview:
  - a. Take informal notes
  - b. Memorandum of interview
  - c. Affidavit
  - d. Question and answer
  - e. Deposition
- (2) **Taking informal notes** is a commonly used method of recording an interview. This may consist of:
  - a. An interview outline.
  - b. Notes you make immediately after an interview or conversation.
  - c. Notes you make on the case chronology record after a phone call with the taxpayer.

**Note:** Prepare informal notes with sufficient detail soon after a conversation to refresh your memory as to what happened during the interview. Any format suffices as long as it shows the date, place, persons present and describes the interview events and content.
- (3) A **memorandum of interview** is an informal statement about the facts you obtained during an interview.
  - a. Show the date, time, place, persons present, and describe the interview events and content.
  - b. Use the exact words of the taxpayer, if possible. Don't assume or interpret meanings. Request clarification when needed. Just record the facts.
  - c. Promptly prepare, sign, and date it.
- (4) An **affidavit** is a written statement of facts, made voluntarily and confirmed by oath. Affidavits are used to:
  - a. Record the testimony of a taxpayer.
  - b. Refresh the memory of a taxpayer.
  - c. Deter a taxpayer from changing their testimony.
  - d. Gather complete and accurate information

Advantages of Using Affidavits	Disadvantages of Using Affidavits
It is a statement made under oath that can be used to establish or impeach the testimony of the individual.	The statement may not follow the exact sequence of the interview.
It can be limited to contain only pertinent information.	It doesn't always reflect all the questions asked.
The affidavit can be obtained during the interview.	Taking a written statement under oath may decrease the willingness of the individual to speak freely.

When the affiant writes the affidavit, it tends to be unbiased.	
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- (5) Use Form 2311, Affidavit, when securing an affidavit; plain paper can also be used. The examiner or affiant can hand-write or type the affidavit. Verify that all words in the affidavit are spelled correctly. It's permissible for one IRS representative to conduct an interview involving an affidavit, but ideally two IRS representatives should be present. At a minimum, an affidavit should contain the following information:
  - The current full name of the person giving the affidavit as well as any current or prior aliases.
  - The most current address of the person giving the affidavit.
  - The present occupation of the person giving the affidavit. If the information relates to a prior occupation, then that occupation should be added.
  - A listing of documents submitted as part of the affidavit.
  - The date on which the affidavit was prepared, the person who prepared it, and any source from which it was prepared.
- (6) After filling out the affidavit, one IRS representative will swear in the affiant by asking: "do you swear or affirm that the foregoing facts are true to the best of your knowledge?" The affiant must have his/her right hand raised when he/she replies to this statement.
- (7) A **question and answer statement** is a transcript of questions, answers, and statements each participant makes at an interview. This form has the advantage of following the exact sequence of the questions asked in the interview. If confirmed by an oath, this form of recording an interview can become an affidavit by doing the following:
  - a. At the bottom of the interview, add on the statement, "Under penalties of perjury, I declare that I have reviewed the above interview information, and to the best of my knowledge and belief, it is true, correct, and complete"
  - b. Provide two lines at the bottom underneath the perjury statement (jurat) for the individual's signature and a typed or printed name and title.
  - c. After signing, the individual should also date their signature.
  - d. Once signed, the interview transcript is considered an affidavit.
- (8) **Depositions** are formal interviews primarily conducted during criminal investigations, where the examiner, Counsel, and a stenographer are present during the interview. For further information, see IRM 9.4.5, Criminal Investigation, Investigative Techniques, Interviews.

4.70.13.3.2  
(11-22-2023)  
**Internal Controls**

- (1) Internal controls are the policies and procedures a taxpayer has in place to identify, measure, and protect business operations. The internal controls are in place to prevent potential areas of non-compliance.
- (2) Evaluating the taxpayer's internal controls and how the controls are carried out will help you:
  - a. Determine the reliability of the books and records and the depth in which you should review them.
  - b. Assess risk.



- c. Determine appropriate examination techniques you should use during the exam.
- (3) Discuss internal controls with the taxpayer's officers or management early in the exam, ideally during the initial interview. Explain the significance of internal controls to the organization.
- (4) In evaluating internal controls, consider the extent to which the organization uses the following control checks:
  - a. Transactions promptly recorded in the books and records
  - b. Segregation of duties/financial responsibilities
  - c. Outside third parties used
  - d. Annual independent audit
- (5) An organization may have these other examples of internal controls in place:
  - Insurance policies (property, directors and officers, etc.)
  - Indemnification of officers and directors
  - Establishment of reserve funds
  - Physical safeguarding of assets
  - Required executive approval for adjusting journal entries
  - Independent reconciliations (outside auditors)
  - Dual signatures on checks
  - Non-use of signature stamps
  - Bonding employees who have access to cash
  - Modern computerized accounting systems
  - Conflict of interest and whistleblower policies
  - Written employee job descriptions
  - Mandatory rotations of accounting employees (e.g., A/P to A/R to Payroll)
  - Mandatory vacations of those responsible for record keeping
- (6) A lack of good internal controls is a sufficient reason to consider expanding the depth and scope of an examination. The group manager must approve any changes to the scope of examination.
- (7) Function unique steps – refer to the following subsections:
  - IRM 4.70.13.3.2.1, Employee Plans
  - IRM 4.70.13.3.2.2, Exempt Organizations and FSL/ET
  - IRM 4.70.13.3.2.3, Tax Exempt Bonds
  - IRM 4.70.13.3.2.4, Indian Tribal Governments

4.70.13.3.2.1  
(11-22-2023)  
**Employee Plans**

- (1) In evaluating internal controls, consider the extent to which the taxpayer uses the following control checks:
  - a. Form 5500 reconciles to plan records
  - b. Reconciles Forms W-2 to plan census information.
  - c. Reconciles contributions from payroll and taxpayer accounts (salary deferrals, matching, non-elective contributions) with plan deposits.
  - d. Utilizes third party administrator in administering plan
- (2) Taxpayer may have these other examples of internal controls in place:
  - Payroll input/approval/reconciliations handled by different individuals
  - Use of third-party payroll service



- Computerized payroll systems programmed to monitor contribution limits
- Compensation reconciliation to plan definition
- Committee approval of loans and hardship distributions
- Independent audit of plan records

4.70.13.3.2.2  
(11-22-2023)  
**Exempt Organizations  
and FSL/ET**

- (1) In evaluating internal controls, consider the extent to which the organization uses the following control checks:
  - a. Return reconciles to the books
  - b. Organization reconciles bank statement balances to the books
  - c. Active board of directors, with members independent of one another
- (2) An organization may have these other examples of internal controls in place
  - Insurance policies (property, directors and officers, etc.)
  - Indemnification of officers and directors
  - Establishment of reserve funds
  - Physical safeguarding of assets
  - Required executive approval for adjusting journal entries
  - Independent reconciliations (outside auditors)
  - Dual signatures on checks
  - Non-use of signature stamps
  - Bonding employees who have access to cash
  - Modern computerized accounting systems
  - Conflict of interest and whistleblower policies
  - Written employee job descriptions
  - Mandatory rotations of accounting employees (e.g., A/P to A/R to Payroll)
  - Mandatory vacations of those responsible for record keeping :

4.70.13.3.2.2.1  
(11-22-2023)  
**Segregation of Duties**

- (1) Segregation of duties is fundamental to a system of internal controls. Ask questions during the initial interview to determine the extent to which the organization has segregated duties.
- (2) The key to the proper segregation of duties, with respect to transactions, is to have separate, independent individuals perform:
  - a. Authorizations
  - b. Executions
  - c. Recordings
- (3) Ask these questions aimed at evaluating segregation of duties for expenditure handling:
  - “Walk me through (the process of) how expenditures are made and recorded.”
  - “Who makes / writes the checks?”
  - “Who signs the checks?”
  - “Who records the expenditures in your accounting system?”
- (4) Ask these questions aimed at evaluating segregation of duties for income:
  - “Walk me through (the process of) how income is received and recorded.”
  - “Who opens the mail?”
  - “Who makes deposits?”

- “Who records the income in your accounting system?”

4.70.13.3.2.2.2  
(11-22-2023)  
**Addressing Poor  
Internal Controls**

- (1) Weak internal controls increase the risk of possible fraud. Discuss any findings of affirmative acts or indications of fraud with your group manager and the TE/GE Fraud Specialist.
- (2) When you find significant weaknesses in an organization’s internal controls it may indicate an increased risk of diverted funds for personal interests which could result in loss of exempt status.

4.70.13.3.2.3  
(11-22-2023)  
**Tax Exempt Bonds**

- (1) Internal controls are the issuer’s policies and procedures (and the conduit borrower’s with respect to its books and records) that are intended to identify and measure business operations that impact bond compliance and ensure the accuracy of operating records. These include procedures the issuer or conduit borrower has in place to monitor post-issuance compliance.
- (2) Evaluating the issuer’s internal controls will help you assess control risk. “Control risk” is the risk that a material misstatement in the books and records could occur and not be detected by the business’s internal control structure, policies, or procedures.

**Example:** An issuer who adopts and implements post-issuance compliance procedures that effectively and regularly monitor compliance with private use restrictions or arbitrage requirements has a lower control risk than an issuer without these procedures. Evaluate internal controls to focus on high-risk areas and accounts, and less on areas or accounts that have little or no likelihood of a tax consequence.

- (3) Collect the information needed to review internal controls by:
  - a. Interviewing the issuer and/or representative.
  - b. Inspecting the documents and records.
  - c. Requesting information.
  - d. Observing the taxpayer’s activities and operations.
- (4) Document the internal controls you evaluated, including
  - Post-issuance compliance monitoring procedures
  - The control environment
  - The accounting system
  - Other control procedures :

4.70.13.3.2.3.1  
(11-22-2023)  
**Post-Issuance  
Compliance Monitoring  
Procedures**

- (1) An issuer implements post-issuance compliance monitoring procedures to foster compliance with the federal tax requirements applicable to tax-advantaged bonds. They are an important part of internal controls. Effective procedures may significantly reduce control risk.
- (2) Early in your exam, consider if the issuer or conduit borrower has adequate compliance monitoring procedures.

**Example:** During the exam, you determine a rebate report should have been prepared but was not, indicating the issuer may have a deficiency in their post issuance compliance procedures.

- (3) Do not look for a particular form of post-issuance compliance monitoring procedures. Instead, verify whether there are procedures designed to be effective at finding and preventing noncompliance under the circumstances of the issuer and the bond issue you're examining. Instead, verify whether there are procedures designed to be effective at finding and preventing noncompliance under the circumstances of the issuer and the bond issue you're examining.

**Example:** A university follows its documented process under which a person who has experience with the tax requirements is responsible for regularly reviewing all research grants and other contracts to determine possible private business use of bond-financed research facilities. You determine that they have an effective post-issuance compliance monitoring process.

- (4) It may be helpful to review reports and exam results of local, state, and federal regulators, and other third parties to determine post issuance compliance.
- (5) The existence of effective post-issuance compliance monitoring procedures may indicate a lower level of risk. However, the opposite may not be true. You don't automatically find noncompliance when an issuer fails to provide documentation of post-issuance compliance monitoring procedures. An issuer isn't required to implement procedures. An issuer that doesn't have procedures may nevertheless demonstrate compliance. Effective procedures, however, should be considered when determining the exam depth.

4.70.13.3.2.3.2  
(11-22-2023)

**Certain Elements of  
Post-Issuance  
Compliance Monitoring  
Procedures**

- (1) Effective post-issuance compliance monitoring procedures may include the following:

- Procedures for conducting due diligence review at regular intervals.
- The official or employee responsible for review.
- Training that will be given to the responsible official/employee.
- Procedures for retaining adequate records to substantiate compliance (for example, records relating to expenditure of proceeds).
- Procedures reasonably expected to identify noncompliance without delay.
- Procedures for ensuring that the issuer will take timely steps to correct noncompliance.

- (2) Due Diligence Review at Regular Intervals:

Use these procedures for periodic monitoring of how the financed property and proceeds are used to ensure that requirements are met, including:

1. Monitoring investments acquired with gross proceeds for arbitrage violations, including computing rebate at appropriate intervals and paying any required rebate.
2. Periodic monitoring, measuring and recording of the percentage of non-qualified use during each appropriate period while the bonds of an issue are outstanding. Determine at the end of each appropriate period whether any nonqualified use results in noncompliance with the qualified use requirements applicable to the bonds.
3. When noncompliance is found, ensuring resources are devoted to correcting that noncompliance including implementing remedial actions under applicable regulations or other guidance. If no remedial action is

provided under applicable regulations, submitting a voluntary closing agreement request to ITG/TEB promptly after the issuer identifies non-compliance.

4. Providing for periodic training of employees responsible for monitoring compliance, including training on the requirements for tax-advantaged bonds, monitoring and measuring the use of proceeds and bond-financed property, and the remedial actions and voluntary closing agreement program. Alternatively, training on procedures for selecting and engaging qualified consultants to handle this compliance review.
  5. Ensuring a qualified employee or consultant reviews long-term arrangements for use of bond-financed property for compliance with the applicable use requirements before the arrangement is entered into or renewed.
  6. If applicable, seeing that a qualified employee or consultant ensures that the financed property is used or operated in compliance with the applicable use requirements.
- (3) Identifying the official or employee responsible for review. Review procedures for assigning a person(s) or position(s) who is responsible for monitoring compliance with each of the tax requirements applicable to a bond issue. In making this assignment, consider:
- The issuer's size and organizational structure.
  - The size and complexity of the issuer's tax-advantaged bonds.
  - The nature of the tax requirements applicable to the bond issue.
  - Other relevant facts and circumstances.
- (4) Retention of Adequate Records to Substantiate Compliance. Procedures for establishing, identifying and maintaining books and records material to determining a bond's compliance with tax requirements, whether those records are created before, on or after the date the bonds are issued. Generally, these records include:
- All the different categories of records that are material to tax compliance.
  - The location where each category of records will be retained.
  - The department, employees, or function responsible for maintaining each category of records.

4.70.13.3.2.3.3  
(11-22-2023)

**Accounting Systems for  
Bond Transactions**

- (1) The recordkeeping requirement for tax-advantaged bonds is not necessarily met by complying with record retention under standard accounting principles.
- a. Accounting systems for many business entities follow Generally Accepted Accounting Principles (GAAP) established by the Financial Accounting Standards Board (FASB) that define the types of summary records (for example, journals and ledgers), financial statements, and required disclosures.
  - b. The Governmental Accounting Standards Board (GASB) proclaims the standards that apply for most governmental entities issuing tax-advantaged bonds.
  - c. While the GASB standards address accounting treatment for liabilities, assets, revenues, and disclosure for bonds related to the overall financial

position of the entity, they don't generally address the accounting for bond proceeds of a transaction in sufficient detail to determine compliance with federal tax requirements.

- d. Often, bond proceeds are deposited into trust accounts and the detailed activity may not be reflected on the GAAP books of the governmental entity.
- e. Conduit financing transactions may only require minimal disclosures in the notes to the financial statements of the issuer (See: *Summary of Interpretation No. 2 Disclosure of Conduit Debt Obligations—an interpretation of NCGA Statement 1 (Issued 8/95)*).

- (2) While the accounting principles may not be sufficient to prove compliance with the tax law requirements, in most cases it is impractical for an issuer to establish a formal set of double entry books accounting for disbursements of bond proceeds (similar to a disbursements journal) or an investment subsidiary ledger accounting for investments purchased and sold.

- 1. When an issuer summarizes the financial activity related to a bond transaction, identify the records maintained and procedures used to produce those summaries.

**Note:** To the extent those records adequately establish a system of accounting (for example, journals, ledgers, and financial statements) for proceeds and investments of the bonds; this may significantly simplify your exam.

- (3) An accounting system for bond transactions should include, at a minimum, three basic elements:

- a. Summary of how and when the gross proceeds were expended.
- b. Summary of how and when the gross proceeds were invested, including purpose and non-purpose investments, and details about the investments.
- c. If applicable, a summary of how the bond financed facility was used.

4.70.13.3.2.3.4  
(11-22-2023)

#### Summary Records of Expenditures

- (1) Summary records of expenditures are statements summarizing how the bond proceeds were expended. Those records may include:
  - For each separate project or purpose, the aggregate amount of proceeds and the aggregate amount of equity or proceeds of other obligations (that is., obligations for which no Form 8038 series return is required to be filed) spent on such project or purpose.
  - A description of each separate project or purpose.
  - The date(s) or date range of the expenditures.
  - Except for working capital expenditures, the average reasonably expected economic life of each separate project or purpose.
  - The date(s) each separate capital expenditure project or purpose was placed in service.
  - Records relating to equity contributions of projects financed with proceeds.
  - A record of the final allocation of proceeds of the issue to expenditures.
- (2) The "project or purpose" of an expenditure should be sufficiently detailed to allow you to determine whether there was a qualified use of proceeds and bond-financed property.

**Example:** All capital expenditures for a new building generally may be treated as used for a single project or purpose if the entire building may be treated as a single project for purposes of the private activity bond restrictions of IRC 141. If applicable, the expenditure's project or purpose description should include information sufficient to establish that the project or purpose is within the scope of expenditures permitted under the public approval of the issue. Expenditures for issuance costs and working capital should be stated as a separate project(s) or purpose(s); and expenditures for qualified guaranteed fees should be separately stated.

4.70.13.3.2.3.5  
(11-22-2023)  
**Summary Records of Investments**

- (1) Summary records of investments are statements summarizing how the gross proceeds were invested. Determine what records are needed. Those records may include the following types of information:
  - The amount paid for each investment.
  - The date the payment for each investment was made.
  - The amount received from each investment.
  - The date each payment was made, and receipt received.
- (2) In appropriate cases, you may determine that a rebate report analyzing investment activity for a period, regardless of whether the rebate report uses the "investment method" showing all reinvestments or the "disbursement method" showing only payments for investments and payments for expenditures, sufficiently summarizes how the proceeds were invested.

4.70.13.3.2.3.6  
(11-22-2023)  
**Summary Records of Qualifying Use**

- (1) Summary records of qualifying use are statements summarizing how the bond financed property was used. Determine what records are needed. Those records may include the following types of information:
  1. A list of all contracts or arrangements for use of the proceeds or bond-financed property, including any contracts or arrangements that are identified as resulting in nonqualified use.
  2. The issuer's confirmation that all such contracts or arrangements were reviewed by a party qualified to determine whether they result in nonqualified use.
  3. A calculation of the total amount of nonqualified use of bond proceeds or bond-financed property (as a percentage of proceeds or net proceeds, as applicable) in each year of the period.
- (2) In general, the issuer's confirmation that all contracts and arrangements were reviewed as described in the preceding paragraph should be based on a review by a responsible officer or officers who know the tax requirements and the types of actions that can result in nonqualified use of bond-financed property. Alternatively, that confirmation may be based on consulting with a person who is knowledgeable in such tax matters.

4.70.13.3.2.3.7  
(11-22-2023)  
**Examiner's Use of Summary Books and Records**

- (1) The examination procedures in this section do not authorize or otherwise permit destruction of any records related to the bond transaction. More specifically, if you, as examiner, decide to use summary records, you are not authorizing that the supporting documentation be destroyed.
- (2) You may use summary records when actual expenditures, investments, or qualifying use result in a significant number of transactions that would create unnecessary burden to review individually, and you can establish the reliability



of the summary records presented as appropriate for the exam. In these instances, you may use summary records to establish facts and other matters.

- (3) You may determine that an issuer's post-issuance compliance monitoring procedures and internal controls help establish the accuracy and reliability of the summary records. If you determine that the post-issuance compliance procedures and internal controls provide appropriate checks and controls and those procedures have been followed, you may accept an issuer's Summary Record of Investments, Summary Record of Expenditures, and any Summary Records of Qualifying Uses as sufficient to establish certain factual and other matters in those records, without requiring substantiation of the content.
- (4) When using summary records, document in the case file the steps you took to evaluate the adequacy of the issuer's internal controls to ensure reliability of the summary records and steps taken to test the accuracy of the summary records.
- (5) In evaluating whether use of summary records is appropriate for a particular exam, consider the facts and circumstances relating to that exam.

**Example:** It may be appropriate to do more rigorous testing of the accuracy of summary records when referral information, prior experience with the issuer, conduit borrower, or transaction professional, or prior experience with the type of bonds being examined indicates a higher likelihood of inaccuracy within the records.

- (6) If you choose to use summary records, you may require those records be substantiated to evaluate any compliance matter. Examples of requiring substantiation include, but aren't limited to:
  - a. You receive later information indicating that summary records do not fairly, accurately, or completely reflect the actual expenditure, investment, or use of proceeds of an issue.
  - b. The summaries are not sufficient to substantiate the bonds compliance with applicable Code provisions.
  - c. You later discover that the issuer's compliance procedures are inadequate.
- (7) TEB: If, the taxpayer's records are unreliable, lost, destroyed, or not available due to circumstances beyond the taxpayer's control, you may allow the taxpayer to present reconstructed records.
  - a. When you determine the issuer's records are incomplete, nonexistent, or suspect, document the case chronology with the reason and describe all your attempts to obtain or reconstruct the taxpayer's records. Consider resolving the issue through a closing agreement.
  - b. If you allow the issuer to present reconstructed records, document this decision in the case file along with the reasons you believe it is reasonable to use the reconstructed records.
  - c. Discuss this with your manager along with whether to issue a summons to secure records from other possible sources.

**Reminder:** Remember, it is the issuer's responsibility to substantiate compliance.

4.70.13.3.2.4  
(11-22-2023)  
**Indian Tribal  
Governments**

- (1) In evaluating internal controls, you might use the following techniques:
- a. Evaluate taxpayer's overall business operations and method of accounting.
  - b. Evaluate records of accounting system(s) maintained by the taxpayer (do books and records clearly reflect business operations).
  - c. Evaluate separation of duties/financial responsibilities.
  - d. Evaluate taxpayer's procedures to safeguard business operations and assets.
  - e. Assess level of control risk (risk that a material misstatement could occur and it will not be prevented or detected by the taxpayer).
  - f. Interview key personnel.
  - g. Review relevant written internal control procedures manual.
  - h. Review Forms W-4 and Forms W-9.
  - i. Review identification verification procedures.
  - j. Review any examinations conducted by compliance officer, internal and external auditors.
  - k. Walk-through and document internal control procedures for:
    - Slot hand pays
    - Tournaments, prizes, and promotions
    - Complementary items
    - Disbursements for subcontractors, i.e., services, entertainers, per capita, etc.

**Note:** The techniques described above are not intended to be all-inclusive nor are they mandatory steps to be followed. Use judgment in selecting the techniques that apply to each taxpayer.

- (2) For more information, see IRM 4.10.3.5, Evaluating the Taxpayer's Internal Controls.

4.70.13.3.3  
(11-22-2023)  
**Tour of Business**

- (1) CFR 301.7605-1(d)(3)(iii) states: "regardless of where an examination takes place, the Service may visit the taxpayer's place of business or residence to establish facts that can only be established by direct visit, such as inventory or asset verification. The Service generally will visit for these purposes on a normal workday of the Service during the Service's normal tour of duty hours."
- (2) A tour of the taxpayer's place of business is an integral part of the examination process. Viewing the taxpayer's facilities and observing business activities is an opportunity to:
- a. Get an overview of the business operation.
  - b. Clarify information obtained through interviews.
  - c. Establish that the books and records accurately reflect actual business operations.
  - d. Observe and test internal controls.
  - e. Identify potential examination issues.
- (3) Conduct a tour of the taxpayer's place of business during all field exams, as applicable. Generally, you should visit the main location and any other locations acquired during the period under examination, if needed.

**Note:** Tours shouldn't disrupt business operations or interfere with the organization's interactions with customers.



- a. Weigh the cost effectiveness and practicality of conducting the tour. Discuss with your Group Manager and consider alternatives when appropriate.
  - b. **EO:** A place of business that is open to the public may indicate possible unrelated business income.
  - c. **TEB:** TEB examiners do not conduct a tour of bond financed facilities when the facility's use is clearly governmental or there is sufficient information available from other sources to conclude that the potential for a violation is minimal. If you do not conduct a tour, use alternative information to document the facility's use or existence.
- (4) Tours can clarify items discussed during the interview and provide a frame of reference when interpreting information in the books and records. This helps you to correctly refine the scope and depth of the examination.
- (5) Conduct tours with knowledgeable individuals. Taxpayers, officers, directors, trustees, employees or their representatives, can often explain practices that appear unusual to you.
- (6) Plan tours to address large, unusual, or questionable (LUQ) items identified during the pre-contact analysis or interviews.
- (7) Observe and be alert to the physical surroundings. During the tour, determine whether others use the taxpayer's place of business. You may need further documentation for space used:
  - a. By other entities.
  - b. By officers or other individuals for their own personal or business use.
  - c. For other than exempt purposes, such as a food service facility or bar open to the public.
- (8) Ask questions to confirm understanding of what you observed.
- (9) Document a completed tour of the taxpayer's place of business and summarize in the workpapers. Indicate:
  - a. Those present during the tour.
  - b. The facilities inspected and the result.
  - c. Observations.
  - d. Answers to questions.
- (10) If a tour of the taxpayer's business facilities is not conducted, the reason(s) should be documented in the workpapers.
- (11) For more information, see IRM 4.10.3.4.3, Audit Techniques for Tours of Business Sites.

4.70.13.3.4  
(11-22-2023)  
**Examination of Books  
and Records**

- (1) The examination of the taxpayer's books and records serves two basic purposes:
  - a. To analyze the likelihood that there are no material errors; and
  - b. To determine that individual data points are valid, allowable, have not been omitted, are recorded at the correct value, are properly classified, and are recorded in the correct time period.
- (2) The basics steps for analyzing and testing the taxpayer's books and records include (but are not limited to):

1. Determine what books and records are available for examination.
2. Have the taxpayer explain the books and records. The accounting and record keeping system should be explained by the person most knowledgeable of the system. The appropriate person may be the taxpayer, an employee of the taxpayer, or the taxpayer's representative. The key is that the person must have knowledge of the taxpayer's accounting system.
3. Determine the accounting period and method used in situations where they are selectable. Consider what accounting periods and methods are available as well as the rules applied to changing them.
4. Determine the depth of examination of the taxpayer's books and records.
  - a. Factors that should be considered when determining the depth include:
    - **Types of Records** — taxpayers use a variety of bookkeeping methods and maintain different types of records.
    - **Volume of Records** — voluminous records may be encountered when examining larger taxpayers or when the taxpayers records are unorganized.

**Note:** When a taxpayer submits unorganized records, the burden is on the taxpayer to organize them and prepare summaries and reconciliations. This can be done with or without the examiner's presence.
  - b. The depth of the examination of the taxpayer's books and records should be established after:
    - Interviewing the taxpayer
    - Touring the business site (if applicable)
    - Evaluating the taxpayer's internal controls
  - c. The depth may be expanded or contracted as the examination progresses, if warranted.
  - d. The depth of the examination of the taxpayer's books and records can be limited to the verification of specific items.
  - e. The depth of the examination of the taxpayer's books and records should include sampling techniques when there are voluminous records. See IRM 4.70.13.3.7, Sampling Techniques.
  - f. Mechanical verification of particular accounts or journals should be kept to a minimum. If the degree of error is substantial, the taxpayer should be asked to make suitable verification and correction before the examination proceeds. Mechanical verification of the taxpayer's books and records should be more extensive when indications of fraud are present. See IRM 4.70.13.13, Fraud and Abusive Transactions.
  - g. Taxpayers are required by law to maintain accounting records in sufficient detail to enable the preparation of an accurate tax return (See IRC 6001). The appearance of the records is not important as long as the accuracy and orderliness are not affected.
  - h. If the taxpayer's records are lost, destroyed, or are not available due to circumstances beyond the taxpayer's control, examiners may allow the taxpayer to present reconstructed records. The reconstructed records should be reviewed to determine the amounts are ordinary and necessary to the taxpayer's activity.

- i. When records are incomplete, nonexistent, or suspect, the examiner should document their case chronology, with all attempts to obtain the taxpayer's records and follow the IDR process. See IRM 4.70.11.9, IDR Process.
- 5. See IRM 4.23, Employment Tax, for procedures on examination of books and records for employment tax cases.

4.70.13.3.4.1  
(11-22-2023)  
**EP Function**  
**Examination of Books**  
**and Records**

- (1) The primary objective of the examination is to determine if the plan is operating per the Internal Revenue Code qualification requirements and with the terms of the plan document. A second objective is to protect the government's interest for income and excise tax liabilities related to the plan. Most qualification provisions and tax issues fall into the categories below in IRM 4.70.13.3.4.1.1 through IRM 4.70.13.3.4.1.3.

4.70.13.3.4.1.1  
(11-22-2023)  
**Compliance in Form -**  
**Plan and Entity**  
**Background – General**  
**Requirements for**  
**Verifying Plan Form**

- (1) Unless otherwise directed, plan form is always a pre-selected issue for a Form 5500-series exam, so examiners must ensure the plan document and all amendments are in compliance with the Code.
- (2) The plan document and amendments in effect for the examination year must be used to verify operational compliance for the examination year. Therefore, if you receive a plan document effective after the year under examination, you must request the prior document.
- (3) You are only required to confirm that the plan complies with qualification requirements effective through the year under examination.
- (4) Generally, you are not required to identify and confirm a plan's form compliance for laws effective after the plan year under examination.
- (5) However, if you pick up a subsequent year(s) for examination, you must verify form compliance in the subsequent year(s) as well.

**Note:** Note: If you become aware that the employer did not adopt required or discretionary amendments that were due to be adopted after the plan year under examination, expand the examination scope to include the subsequent year(s) Form 5500. If the subsequent year(s) Form 5500 has not been filed and the due date for filing has not passed, advise the employer of the requirement to adopt the specific amendments.

- (6) Plan Adoption Deadlines – Prior to 2020, a new plan had to be adopted before the end of the initial plan year. For plan years beginning January 1, 2021, or later, Section 201 of the SECURE Act provides that a plan must be established by the due date (including extensions) of the employer's return.

**Example:** A calendar year employer that intended to sponsor a plan during 2019 must have adopted it by December 31, 2019. In contrast, a calendar year employer that intended to sponsor a plan during 2020 must have adopted it by the due date of their 2020 federal tax return.

- (7) Plan Amendment Deadlines – Disqualifying Provisions, Requirements:
  - a. The Plan document must comply with the law, specifically, the provisions of IRC 401(a). Disqualifying provisions generally arise when the law changes and plan language must be updated to comply with the new law.

- b. IRC 401(b) provides for a remedial amendment period (RAP) during which the plan document may be retroactively corrected for disqualifying provisions. Corrections made outside the RAP violate IRC 401(b) and cause a plan qualification failure.

(8) Plan Amendment, Disqualifying Provisions - Interim Amendments:

- a. An amendment with respect to a disqualifying provision is referred to as an interim amendment.
- b. The deadline to adopt an interim amendment is the date on which the RAP expires.
- c. Interim amendments are no longer required for individually designed plans (IDPs) where the adoption deadline was on or after January 1, 2017. Disqualifying provisions that require amendments for IDPs should be identified by reviewing the Required Amendments List (RAL).
- d. For disqualifying provisions that are effective with respect to a plan on or before December 31, 2020, the RAP ends the later of:
  - The due date (including extensions) for filing the employer's tax return for the taxable year in which the amendment is adopted or effective, whichever is later (or in which the plan is put into effect for a new plan).
  - or
  - The last day of the plan year in which the amendment is adopted or effective, whichever is later (or in which the plan is put into effect for a new plan).
- e. For disqualifying provisions that are effective with respect to a plan after December 31, 2020, an employer is considered to have timely adopted the interim amendment if the plan amendment is adopted by the end of the second calendar year in which the change in qualification requirements is effective with respect to the plan.
- f. Disqualifying provisions that require Interim amendments for Pre-approved Plans (PAPs) should be identified by reviewing Cumulative Lists, Required Amendments Lists and the Operational Compliance List.

(9) Cumulative Lists (CLs):

- a. Prior to 2017, CLs were published annually to be used by employers and practitioners submitting determination letter applications.
- b. Beginning in 2017, CLs are only published prior to the beginning of each six-year RAC to review pre-approved plan documents submitted for opinion letters.
- c. The 2017 CL (Notice 2017-37) was published for the 3rd RAC for pre-approved defined contribution plans. The 2017 CL contains items that relate to pre-approved defined contribution plans that were included on the 2011-2015 CLs and for which statutes were enacted and guidance was issued through February 1, 2017.
- d. The 2020 CL (Notice 2020-14) was published for the 3rd RAC for pre-approved defined benefit plans. The 2020 CL generally sets forth changes in the qualification requirements that were issued, enacted, or effective after October 1, 2012, and through December 1, 2019, that relate to pre-approved defined benefit plans.
- e. Cumulative Lists applicable for the 2nd and 3rd RACs are:

<b>Cumulative List:</b>	<b>Published In:</b>	<b>Applicable To:</b>
2010	Notice 2010-90	Cycle 2A IDPs DC D 2nd RAC PAPs
2011	Notice 2011-97	Cycle 2B IDPs
2012	Notice 2012-76	Cycle 2C IDPs DB 2nd RAC PAPs
2013	Notice 2013-84	Cycle 2D IDPs
2014	Notice 2014-77	Cycle 2E IDPs
2015	Notice 2015-84	Cycle 3A IDPs
2017	Notice 2017-37	Only DC 3rd RAC PAPs
2020	Notice 2020-14	Only DB 3rd RAC PAPs

(10) Required Amendments List (RAL):

- a. Effective January 1, 2017, the 5-year staggered remedial amendment cycle (RAC) for IDPs was eliminated. As part of this change, employers sponsoring IDPs were no longer required to adopt interim amendments for items on CLs, but instead were required to adopt amendments for items on the RAL.
- b. For laws effective on or after January 1, 2016, the IRS publishes an annual RAL that applies to IDPs. Note: RALs do not apply to Pre-approved Plans.
- c. The RAL sets the end of the RAP for an IDP with respect to the changes in qualification requirements that appear on the RAL.
- d. Amendments for items on the RALs must be adopted by the end of the 2nd calendar year following the calendar year in which the change is identified on the RAL.

<b>YEAR</b>	<b>Required Amendments List</b>	<b>General Plan Amendment Deadline</b>
2016	Notice 2016-80	12/31/2018
2017	Notice 2017-72	12/31/2019
2018	Notice 2018-91	12/31/2020
2019	Notice 2019-64	12/31/2021
2020	Notice 2020-83	12/31/2022
2021	Notice 2021-64	12/31/2023
2022	Notice 2022-62	12/31/2024

(11) Operational Compliance List (OCL):

- a. The OCL is provided on IRS.gov to identify changes in qualification requirements that are effective during a calendar year. The OCL identifies matters that may involve either mandatory or optional plan amendments depending on the type of plan.
- b. In order to meet the qualification requirements, a plan must comply operationally with each relevant requirement, even if the requirement is not included in the OCL.
- c. The OCL applies to both Pre-approved Plans and IDPs.

(12) Extension of the Remedial Amendment Period:

- a. Treasury Regulation Section 1.401(b)-1(e) grants the Commissioner of Internal Revenue the discretion to extend the RAP.
- b. Rev. Proc. 2020-9 extended the deadline for amending a plan to comply with the final regulations under IRC 401(k) and IRC 401(m) relating to hardship distributions of elective deferrals to December 31, 2021.
- c. Notice 2022-33 extended the deadlines for amending a plan to comply with the SECURE Act, section 104 of the Miners Act and section 2203 of the CARES Act to December 31, 2025.
- d. Notice 2022-45 extended the deadline for amending a plan to reflect the provisions of section 2202 of the CARES Act and section 302 of the Relief Act relating to coronavirus-related distributions or qualified disaster distributions, respectively, to December 31, 2025.

(13) Plan Amendment Deadlines – Discretionary Provisions:

- a. Discretionary Provisions arise when the employer wants to make a change to their plan that is permitted under the law but not required to be adopted to correct a disqualifying provision.
- b. The deadline to adopt an amendment for a discretionary provision is generally the end of the plan year in which the plan amendment is operationally put into effect, unless an earlier or later deadline is provided by statute, regulations or other guidance published in the Internal Revenue Bulletin.

**Example:** The employer wishes to add a participant loan feature for the plan year ending December 31, 2020. The deadline to adopt a discretionary amendment for this change is December 31, 2020.

- c. One exception to the rule above is that amendments adopted within 2½ months after the end of the plan year may be taken into account in determining funding for the prior year if the amendment does not reduce benefits.

(14) Plan Termination:

- a. The termination of a plan ends the plan's RAP and, thus, generally will shorten the RAP for the plan.
- b. Any retroactive remedial plan amendments or other required plan amendments for a terminating plan (that is, plan amendments for laws effective as of the date of termination) must be adopted in connection with the plan termination regardless of whether such requirements are included on a RAL or Cumulative List.

**Note:** Look to the OCL to identify laws in effect on the date of termination.

- (15) If an employer can't prove that the plan was timely amended for prior law, the plan is considered to have a Plan Document Failure defined in Rev. Proc. 2021-30 and may need to enter into a closing agreement to correct the failure. Consult with your manager and see IRM 4.70.14.2.1.2.2, EP – EPCRS and Closing Agreements.
- (16) There may be different deadlines and requirements for plans maintained by more than one employer, governmental plans and 403(b) Plans.
- (17) If help is needed in determining plan document qualification during an examination, reach out to the Determinations Assistance Program. Help is focused on individually designed plans, but is available for plans that have:
  - a. No prior Determination Letter.
  - b. A Determination Letter that is older than 5 years from the year under examination.
  - c. A recent Determination Letter, but have newly adopted voluminous or questionable amendments.
  - d. Merged after the Determination Letter was issued.
- (18) Complete the Assistance Request form and email it, along with the plan document, amendments and any other documents to be reviewed, to: *\*TE/GE-EP-Determ Exam Requests*.

4.70.13.3.4.1.1.1  
(11-22-2023)

**Compliance in Form -  
Plan and Entity  
Background – Steps for  
Examination of Adopters  
of Pre-Approved Plans**

- (1) Obtain a copy of the plan document, the trust document and any amendments in effect for the examination year.
- (2) Secure a copy of the Opinion or Advisory Letter issued to the pre-approved Provider. Note: Beginning with the 3rd six-year Remedial Amendment Cycle (RAC), the Master & Prototype (M&P) and Volume Submitter (VS) Programs were combined and replaced by a single Opinion Letter program involving Standardized Plans and Nonstandardized Plans, which are now collectively referred to as Pre-approved Plans (PAPs).
- (3) Determine if the plan has previously received a favorable determination letter (FDL) or has a pending FDL application.
  - a. IDRS Command Code EMFOLL displays information for prior determination letter applications.
  - b. You may obtain a copy of an FDL by asking the employer.
  - c. You may request a copy of a favorable determination letter by faxing a request to Customer Service at (855) 224-1311 or by emailing: *kayla.g.palmer@irs.gov*.

**Note:** In your request, provide the Employer Name, Employer EIN, Plan Number, Plan Name, your name and the year the letter was issued (if known).

  - d. If the plan has a pending determination letter application, coordinate your examination with the determination specialist.
- (4) Verify that the employer adopted the Pre-approved Plan by the end of the applicable six-year RAC.
  - a. For DC plans, the end of the 3rd six-year RAC for plan qualification requirements expired on July 31, 2022. The end of the second six-year RAC expired on April 30, 2016.



**Note:** For examinations of 2020 and 2021 plan years, either the second or third six-year RAC pre-approved document may be in effect. Verify that the document was signed by the end of the applicable RAC. The 2nd RAC restatement must have been adopted by April 30, 2016. The 3rd RAC restatement must have been adopted by July 31, 2022.

Pre-Approved DC Plans	1st RAC EGTRRA	2nd RAC PPA	3rd RAC
RAC	2/1/2005 – 1/31/2011	2/1/2011 – 1/31/2017	2/1/2017 – 1/31/2023
Guidance	Ann. 2008-23	Ann. 2014-16	Ann. 2020-7
Type of Plan	M & P / VS	M & P / VS	Pre-Approved Plans
Type of Letter	Opinion Letter	Opinion Letter	Opinion Letters
	Advisory Letter	Advisory Letter	
Cumulative List	2004 CL	2010 CL	2017 CL
Date of Letter	3/31/2008	3/31/2014	6/30/2020
Adoption By:	04/30/2010*	4/30/2016	7/31/2022

- b. For DB plans, the end of the second six-year RAC for plan qualification requirements expired on July 31, 2020. This document should be in effect for examination years beginning on and after January 1, 2020. Verify that it was timely adopted by July 31, 2020.

Pre-Approved DB Plans	1st RAC EGTRRA	2nd RAC PPA	3rd RAC
RAC	2/1/2007 – 1/31/2013	2/1/2013 – 4/30/2020	5/1/2020 – 1/31/2025
Guidance	Ann. 2010-20	Ann. 2020-35	Ann. 2023-06
Type of Plan	M & P / VS	M & P / VS	Pre-Approved Plans
Type of Letter	Opinion Letter Advisory Letter	Opinion Letter Advisory Letter	Opinion Letters
Cumulative List	2006 CL	2012 CL	2020 CL
Date of Letter	3/31/2010	3/30/2018	2/28/2023
Adoption By:	4/30/2012	7/31/2020	3/31/2025



- (5) Examiners are no longer required to verify that the employer was entitled to the current RAC by verifying the timely adoption of a pre-approved document for the prior RAC.
- (6) Confirm and document that all interim amendments through the last day of the year under examination have been adopted by the end of the applicable RAP.
  - a. Start by reviewing laws identified as NEW in Cumulative Lists beginning after the Cumulative List for which the plan has reliance (i.e., the Cumulative List identified in the Opinion Letter for the document in effect in the examination year).

**Note:** The 2017 Cumulative List (Notice 2017-37) contains items that relate to pre-approved DC plans that were included in the 2011 – 2015 CLs and subsequent items through February 1, 2017. Use the 2017 CL to review requirements for a DC plan if the plan has reliance on the 2010 CL.

**Note:** The 2020 Cumulative List (Notice 2020-14) contains items that related to pre-approved DB plans that were included in the 2013 – 2015 CLs and subsequent items through December 1, 2019. The 2020 CL does not include changes in qualification requirements made by the SECURE Act. Use the 2020 CL to review requirements for a pre-approved DB plan if the plan has reliance on the 2012 CL.

- b. For years that are not covered by a Cumulative List, use the RAL and/or OCL to identify changes in the qualification requirements effective through the year under examination that would require an interim amendment.

**Note:** Not all items on the OCL will require an amendment.

**Note:** Although the RALs do not apply to pre-approved plans, RALs may be used by examiners as a tool to determine amendments that would be due.

- c. Determine that all interim amendments were adopted timely by the end of the RAP. Generally, a Pre-approved Provider is permitted to adopt amendments on behalf of the employer.

**Exception:** For the 1st and 2nd RAC, a Volume Submitter (VS) plan document must specifically provide that the VS practitioner had the power to amend. Otherwise, the employer must have adopted the applicable interim amendments.

**Example:** If the 2010 CL pre-approved 2nd RAC VS plan document does not state that the VS practitioner had the power to amend on behalf of adopting employers, you will also need to verify the interim amendments during the 2nd RAC, i.e., for 2011-2015 CLs, were timely adopted by the employer. Example: If the 2010 CL pre-approved 2nd RAC VS plan document does not state that the VS practitioner had the power to amend on behalf of adopting employers, you will also need to verify the interim amendments during the second RAC, i.e. for 2011-2015 CLs, were timely adopted by the employer.

**Note:** Effective October 2, 2017, all pre-approved plan documents were required to contain provisions permitting Providers to adopt interim amendments on behalf of employers that adopt their plans.

- (7) Verify and document that the plan was operated in compliance with applicable items on the OCL in effect through the plan year under examination. Start by reviewing the items on the OCL for the year of the Cumulative List for which the plan has reliance or begin with the 2016 OCL (if later). Document which items on the OCL were applicable and your analysis of operational compliance.
- (8) Examine discretionary amendments and verify that they were adopted by the end of the plan year in which the plan amendment is operationally put into effect. You must document amendment timeliness for discretionary amendments in the same way as interim amendments.
- (9) The failure to qualify as a pre-approved plan is not a qualification issue.
  - a. If you determine that a pre-approved plan was not timely adopted for the most recently ended six-year RAC, treat the plan as an individually designed plan as of the date immediately following the last day of the RAC through the date the late restatement was adopted. Confirm that the employer adopted amendments during this period by their deadlines or that a determination letter was issued.

**Example:** You are examining the 202012 Form 5500 for a defined contribution plan on December 2, 2022. The employer provided a copy of a PPA restatement in effect in the 202012 plan year. The restatement was executed 8/31/2017, which was late. To determine if the plan was previously a pre-approved plan you request the prior document, an EGTRRA document, that was timely adopted by 4/30/2010. As such, the plan is treated as a pre-approved plan until 4/30/2016, i.e. the end of the 2nd RAC, but is treated as an IDP beginning on 5/1/2016. The employer re-qualified for the 6-year RAC on 8/31/2017 when they adopted the PPA pre-approved document, thus entitling them to the 3rd RAC. If you determine that all applicable interim amendments on the 2017 CL were timely adopted, there is no form issue.

**Example:** Consider the same scenario as in the example above, except that the PPA restatement was never adopted. Because the EGTRRA pre-approved document was timely adopted by 4/30/2010, the plan is treated as a pre-approved plan until 4/30/2016, i.e. the end of the 2nd RAC, but is treated as an IDP beginning on 5/1/2016. You should verify all required amendments after the 2004 CL through the year under examination were adopted timely. This would include verifying interim amendments after the 2004 CL and amendments for items listed on the 2016, 2017, 2018 and 2019 RALs. If the employer wants to return to the 6-year RAC, the employer should adopt a current 3rd RAC pre-approved plan document.

- b. IDPs may satisfy the requirements of self-correction as provided in Rev. Proc. 2021-30, Part IV.

**Note:** Request assistance using the Determinations Assistance Program if

you need help. See IRM 4.70.13.3.4.1.1.1(16).

- (10) Document a conclusion with respect to plan qualification in form.

4.70.13.3.4.1.1.2  
(11-22-2023)

**Compliance in Form -  
Plan and Entity  
Background - Audit  
Steps for Examination of  
Adopters of Individually  
Designed Plans**

- (1) Obtain a copy of the plan document, trust document and any amendments in effect for the examination year.
- (2) Determine if the plan has previously received or has a pending determination letter application.
  - a. IDRS Command Code EMFOLL displays information for prior determination letter applications.
  - b. You may obtain a copy of an FDL by asking the employer.
  - c. You may request a copy of a favorable determination letter by faxing a request to Customer Service at (855) 224-1311 or by emailing: *kayla.g.palmer@irs.gov*.

**Note:** In your request, provide the Employer Name, Employer EIN, Plan Number, Plan Name, your name and the year the letter was issued (if known).

- d. If the plan has a pending determination letter application, coordinate your examination with the determination specialist.
- (3) Verify form compliance with interim amendments required after the CL for which the plan has reliance and through the 2015 CL.
  - a. If the plan does not have an FDL that provides reliance for the 2010 CL or later, verify compliance with all interim amendments included on the 2015 CL (2011-2015 interims).
  - b. If the plan has a FDL for the 2010 CL or later, verify compliance with subsequent interim amendments up through the 2015 CL.
  - c. If the plan has an FDL considering an RAL, do not verify compliance with any CLs.

- (4) Verify form compliance with the 2016 and subsequent RALs in effect through 2 years prior to the exam year.

**Note:** If the plan has an FDL considering an RAL, start reviewing RALs beginning with the RAL after the plan has reliance.

- (4) Verify operational compliance with items listed on the OCL for 2016 through the year under examination.
- (5) If the employer adopted any discretionary amendments effective in the examination year, verify that they were either adopted by the end of the plan year first effective or permissibly adopted later. You must document amendment timeliness for discretionary amendments in the same way as interim and required amendments.
- (6) Document a conclusion with respect to plan qualification in form.

4.70.13.3.4.1.2  
(11-22-2023)

**Compliance in Operation  
and Tax Issues**

- (1) **Required Filing Check.** Verify that the plan and sponsor satisfy the required filing checks as specified in IRM 4.70.12.3.6, Required Filing Check. Required filing checks vary depending on the examination scope.

- (2) **Eligibility/Participation/Coverage.** Determine whether all eligible employees are participating in the plan (IRC 410(a), IRC 410(b), and IRC 401(a)(26)).
- (3) **Vesting.** Determine whether the plan meets the minimum vesting standards of IRC 411 and, if applicable, top heavy requirements of IRC 416.
- (4) **Allocations/Accruals.**
  - a. Determine whether the contributions, accruals and forfeitures are calculated correctly, according to the plan provisions and IRC 411.
  - b. Verify that the plan's definition of compensation is statutorily permitted for allocations/accruals and is followed in operation.
  - c. Verify that the allocations and/or accruals are not discriminatory under IRC 401(a)(4).
  - d. For a cash balance plan in which the benefit formula is not the subject of a determination letter, follow the analysis (including examples) in the Issue Snapshot on Definitely Determinable Benefits for determining whether a benefit formula based on only a portion of annual compensation, a special bonus, or other measure not based on annual compensation, is "definitely determinable". See *Employee Plans Examination Exhibits*, for the Issue Snapshot on Definitely Determinable Benefits.
  - e. Determine if IRC 436 benefit limits apply.
- (5) **Top-Heavy.** Determine whether the plan is top-heavy and if so, operates according to the plan provisions and IRC 416. See Issue Resource Guide, Top Heavy Plans.
- (6) **Discrimination.**
  - a. Verify whether the plan's definition of compensation is followed in operation and that participant allocations and accrued benefits are determined per the plan document.
  - b. Verify that compensation is properly limited by IRC 401(a)(17) in operation.
  - c. Determine whether the plan's definition of compensation results in prohibited discrimination.
  - d. Verify that the plan's definition of compensation satisfies the requirements of IRC 414(s). Compare compensation as defined in the plan to total compensation paid to the participants.
  - e. Review and compare compensation reported on Forms 941, Forms W-2, Forms 1120 and payroll records.
  - f. If family members are plan participants, ensure that they actually perform services for the employer and did not receive favored eligibility, benefits, vesting upon separation, as compared to other participants.
- (7) **IRC 401(k) and IRC 401(m)**
  - a. Determine whether the plan meets all requirements of IRC 401(k) and IRC 401(m).
  - b. Make sure the plan satisfies IRC 401(k)(12) and IRC 401(k)(13) if the plan is intended to be a safe harbor 401(k) plan.
  - c. Document all items you examined in your IRC 401(k) and IRC 401(m) analysis in your workpapers.

**Note:** See Issue Resource Guide, Cash or Deferred Arrangements and Issue Resource Guide, Employee Contributions and Matching Con-

tributions, for technical guidance on examining plans with IRC 401(k) and/or IRC 401(m) provisions.

(8) **Deduction Limitation.**

- a. Determine whether the total amount of employer contributions (considering contributions to all of the employer's plans) are within the IRC 404 limits and paid by the IRC 404 due date. See IRC 404 and IRC 412.
- b. Verify, in applicable defined benefit plans, that all gains or losses (such as cash surrender values, dividends, refund of premiums) are used in determining the employer's allowable deduction in the current or next succeeding year or are properly amortized.
- c. See Issue Resource Guide, IRC 404 Examination Guidelines, for technical guidance related to IRC 404.

(9) **Minimum Funding.** Determine if the minimum funding standards of IRC 412, IRC 430, IRC 432 and IRC 436 are met and if not, determine tax due under IRC 4971.

**Note:** Until the provisions of the Internal Revenue Code are revised, IRC 4971 cannot be applied to defined contribution plans for 2008 and subsequent tax years.

(10) **Review of the Trust.**

- a. Inspect the trust fund, by reviewing its balance sheet, the income and expense statement and asset source documents to verify that plan assets are properly recorded and held in the name of the trust.
- b. Get information to determine if the trust has engaged in any of the following: prohibited transactions under IRC 4975(c), (see Issue Resource Guide, Prohibited Transactions, for technical guidance); transactions that generate unrelated debt financed income under IRC 514 or an unrelated trade or business as defined in IRC 513.
- c. Verify, in profit-sharing, stock bonus and money purchase plans that assets were valued annually at fair market value; that participants' accounts were debited or credited for the change in market value; and that participants were notified of the change in value.

**Note:** Fair market value must be used to value depreciable assets. Cost less depreciation or book value cannot be used to determine fair market value. See Rev. Rul. 80-155. Also, see *Issue Resource Guide*, Valuation of Assets.

- d. Examine trust assets to determine whether the trust has invested in the employer's stock and securities. If so, find out whether there were prohibited transactions and/or violations of the exclusive benefit rule.
- e. Examine the income and expense schedules and records in detail to determine whether funds have reverted to the sponsor or have been used for purposes other than the exclusive benefit of employees or their beneficiaries.
- f. Closely inspect non-cash contributions by the employer (e.g., stocks, notes or other securities including employer stock and securities) before allowing a deduction. For defined benefit plans, money purchase plans and certain defined contribution plans, determine whether the non-cash contributions constituted prohibited transactions. Refer to the U.S. Su-

preme Court decision in *Commissioner v. Keystone Consolidated Industries, Inc.*, 508 U.S. 152 (1993) and issued DOL Interpretive Bulletin 94-3 dated 12/28/94.

- g. Consider fraud if you have determined that trust assets have been mis-handled or misappropriated. See IRM 4.70.13.13, Fraud and Abusive Transaction Procedures, for instructions on contacting the EP Fraud Subject Matter Expert (EP Fraud SME) or the TE/GE Fraud Specialist.

**Note:** See Employee Plans Examinations Exhibits, or the TE/GE Knowledge Management website for fraud contact information.

**Note:** See also IRM 4.70.13.3.4.1.2 (11) covering plan loans.

(11) **Plan Loans.**

- a. Determine whether plan loans are prohibited transactions under IRC 4975.
- b. Determine whether plan loans comply with IRC 72(p).

**Note:** When a plan makes two or more loans to the same participant during a 1-year period, IRC 72(p)(2)(A)(i)(I) defines the “highest outstanding loan balance” during the 1-year period ending on the day immediately before the day the plan makes the second or subsequent loan. The law allows for the computation of the “highest outstanding loan balance” in one of two ways, as illustrated in the following example:

**Example:** Method I: A plan participant borrowed \$30,000 in February of 2019, and repaid it in April of 2019, and borrowed \$20,000 in May of 2019, and repaid it in July of 2019. If the same participant applied for a third loan in December of 2019, no further loan would be available, since his “highest outstanding loan balance” is \$50,000 (\$30,000 + \$20,000).

**Example:** Method II: Using the same facts as used in Method I, the plan determines the “highest outstanding loan balance” as \$30,000, and permits the third loan of \$20,000.

**Note:** Since the law permits either method (by not specifically precluding either) to compute the “highest outstanding loan balance,” the plan satisfies IRC 72(p)(2)(A) using either method and doesn’t exceed the maximum permitted amount.

- (12) **IRC 415 Limits.** Determine whether any participants’ annual additions or accrued benefits have exceeded the limits under IRC 415. The plan should contain language, when necessary, that coordinates with other plans of the employer (or related employer) to assure that participant benefits and/or contributions do not exceed the annual limits. See *Issue Resource Guide, Section 415(b)* and *Issue Resource Guide for IRC 415(c)*, *Issue Resource Guide, Examination Guidelines for IRC 415(c)*.

(13) **Distributions.**

- a. Verify that distributions to participants (terminated or otherwise) were paid per the plan’s provisions for the form of distribution (lump sum or annuity). Verify that the correct benefit amounts were timely distributed



- under the terms of the plan document and per the IRC (paid immediately, after a break-in-service, or other time).
- b. Verify that spousal consent was secured when required by the plan and the IRC.
- c. Verify that any hardship distributions were per plan terms and the IRC.
- d. Verify that the minimum distribution requirements of IRC 401(a)(9) are satisfied.

**Note:** When the only reason a plan fails to make a required minimum distribution is because the participant or beneficiary could not be found (considered missing), the plan's qualified status should not be challenged. However, before a participant or beneficiary is considered missing, a diligent search for the participant or beneficiary must be conducted.

**Note:** A diligent search includes **all** of the following steps:

- A search for alternate contact information (address, telephone, or email) contained by the plan, related plan, plan sponsor and publicly-available records or directories.
- Use of a commercial locator service, a credit reporting agency or a proprietary internet search tool for locating individuals.
- The mailing of a contact letter sent by United States Postal Service via certified mail to the last known address and to any other alternate address found.
- e. Verify that the eligible rollover requirements and mandatory distribution requirements of IRC 401(a)(31)(A) and IRC 401(a)(31)(B), respectively, are met.
- f. Verify that the employer or trustee met the required reporting requirements, including filing Forms 1099-R, for those individuals who received a distribution and that the correct tax was withheld under IRC 3405.

**Note:** See *Issue Resource Guide, Qualified Joint & Survivor Annuity Requirements* and *Issue Resource Guide, Single-Sum Distributions*, for technical guidance on forms of benefits and distributions.

- g. Verify that Form 8955-SSA was properly filed when applicable.
  - h. Verify that participant loans complied with IRC 72(p) (that is, should loans be treated as distributions?). See IRM 4.70.13.3.4.1.2 (11) covering plan loans.
- (14) **ESOP Plans.** Verify that the ESOP requirements under IRC 409 and IRC 4975 have been met. See *Issue Resource Guide, ESOPs*.
  - (15) **IRC section 403(b) Plans.** Follow established procedures as reflected in Issue Resource Guide, IRC Section 403(b) Plans.
  - (16) **Multiemployer Plans.** Follow established procedures in Issue Resource Guide, Multiemployer Plan Examination Guidelines.
  - (17) **SEP Plans.** Determine whether the plan operates per IRC 408(k). Follow procedures in, *Simplified Employee Pensions (SEPs) and Salary Reduction SEPs (SARSEPs)*.
  - (18) **SIMPLE IRAs.** Determine whether the plan operates per IRC 408(p).



4.70.13.3.4.1.3  
(11-22-2023)  
**Function Specific  
Procedures EP –  
Non-Return Unit  
Examinations**

- (19) **International Issues.** Determine if the plan and the sponsor are involved in any international operations that could affect the plan's qualification or result in any associated tax liabilities.

- (1) TE/GE, Employee Plans (EP) often examines retirement plans for which no return is filed. These are called Non-Return Units (NRU).
- (2) The general TE/GE examination guidelines apply to NRU examinations.
- (3) Examiners should consult the CP&C analyst when they have questions about NRU examinations.
- (4) The AIMS Non-Master File (NMF) is programmed to include MFT 74 for the following types of NRU cases:
  - IRC 403(b) plans
  - IRC 457(b) plans
  - IRC 457(f) plans
  - IRC 401(a) Governmental plans
  - Simplified Employee Pensions (SEP IRA)
  - Salary Reduction Simplified Employee Pensions (SARSEP IRA)
  - Simple Retirement Accounts (SIMPLE IRA)
- (5) The NMF AIMS uses MFT 99 for the following types of NRU cases:
  - Non-Bank Trustee/Custodian Investigations
  - Promoter Penalty Investigations
  - Return Preparer Penalties
  - Non-Filer Cases
  - Penalties for Failure to Disclose a Reportable Transaction - IRC 6707A
  - Other plans for which a return was not filed and there's not enough information available to determine if there is a filing requirement
  - Any other plan without a filing requirement

4.70.13.3.4.1.3.1  
(11-22-2023)  
**Function Specific  
Procedures EP -  
Examination of SEPs,  
SARSEPS and SIMPLE  
Plans**

- (1) EP examines a significant population of SEPs, SARSEPs and SIMPLE plans (collectively referred to as IRA-based plans).
- (2) The Employee Plans IRA-based Plan compliance strategy:
  - a. Examines current plan years
  - b. Finds issues and seeks correction for current plan year operational and plan form (plan language) deficiencies
  - c. Addresses abusive and egregious IRA-based plans
- (3) Examine only current years (years where the three year statute of limitations is still open on related Forms 1040 for HCEs or non-highly compensated participants with significant income tax adjustments) unless the issues are abusive or egregious.
- (4) Examples of IRA-based plan abusive or egregious situations are:
  - a. The taxpayer has significant numbers of rank and file employees who met the plan's eligibility requirements but aren't included in the plan.
  - b. The plan makes contributions for owner-employees or HCEs only, but doesn't allow eligible rank and file employees to participate.

- c. Plan contributions for owner-employees or HCEs are substantially in excess of the annual contribution limits and/or in excess for multiple plan years.
  - d. Salary deferrals made by participants are not being deposited into their IRA accounts.
- (5) If you discover an abusive or egregious situation, consider picking up years beyond current years (plan years beyond the plan year assigned and years in which the three-year statute of limitations is still open).

**Note:** You may go back to prior years per IRC 6501(e) and IRM 25.6.1.9.5.3, 25% Omission, (see for the conditions to apply the six-year statute to propose adjustments to 1040 returns). Consult your manager before making adjustments to owner-employer and HCE Forms 1040 with six-year statute of limitation dates. Also, you may apply IRC 4973 excise tax in abusive or egregious situations in prior years if the statute is not barred by the taxpayer's filing of a Form 5329.

- (6) Each IRA-based plan case file assigned to the group contains a lead sheet with instructions and focused examination issues should address on your exam.

**Note:** The same examination method that applies to Form 5500 examinations, applies to IRA-based plans. See IRM 4.70.12.4, Examination Plan Development and Approval.

- (7) See Issue Resource Guide, Employee Plans Technical Guidelines, Simplified Employee Pensions (SEPs) and Salary Reduction Simplified Employee Pensions (SARSEPs) for technical guidance for SEP and SARSEP examinations.
- (8) You may also contact the IRA-based plan project analyst for help with your IRA-based plan examination.
- (9) SEP/SARSEPs and SIMPLE IRA plans must comply with 408(k) and IRC 408(p) respectively, every year.
- a. If you determine that a SEP/SARSEP doesn't comply with IRC 408(k) in a given year, that year of non-compliance stands alone and remains non-compliant until the sponsor enters into a closing agreement covering that specific year.
  - b. An IRA-based plan that doesn't comply in a particular year isn't automatically considered non-compliant in a subsequent year. In order to be considered to be non-compliant in a subsequent year, the plan must have violated IRC 408(k) or 408(p) in the subsequent year.

**Note:** IRA-based plans are different than qualified plans under IRC 401(a) in that the IRS doesn't issue individual plan rulings for qualification for IRA-based plans. When EP finds an operational failure in an IRA-based plan and the taxpayer doesn't agree to correct the issue, we treat each individual year with a failure as an ineligible plan year. The IRS doesn't deem subsequent plan years as automatically disqualified, as we do with a 401(a) plan.

- (10) Use Letter 6049, TE/GE No Change Letter, if there are no examination issues.

- (11) When you determine that a SEP/SARSEP doesn't satisfy IRC 408(k) or a SIMPLE IRA doesn't satisfy IRC 408(p):
- Discuss the issue with your manager and determine whether the violation can be corrected through the Audit Closing Agreement Program (Audit CAP) or through the Self-Correction Program (SCP).
  - Follow IRM 4.70.14.2.1.2.2, EPCRS and Closing Agreements, when resolving an issue through EPCRS or *Delegation Order 8-3*, Rev. Proc. 2021-30 gives examples of acceptable correction methods for SEP, SARSEP, and SIMPLE IRA violations. Discuss reasonable methods of correction with your manager.
  - If the examination is resolved through SCP, use Letter 1744-A to close the examination.

**Note:** Letter 1744-A contains an option under "Type of Plan" that allows you to select the type of plan (SEP, SARSEP or SIMPLE IRA).

- If the examination is resolved through Audit CAP, use Letter 1744-G or Letter 1744-H (as applicable) to close the examination.

**Note:** Letter 1744-G contain an option under "Type of Plan" that allows you to select the type of plan (SEP, SARSEP or SIMPLE IRA).

- If the IRC 408(k) violations are significant and not resolved through Audit CAP, the SEP is considered to be non-compliant with IRC 408(k).
- Likewise, if the IRC 408(p) violations are significant and can't be resolved through Audit CAP, the SIMPLE IRA is considered to be non-compliant with IRC 408(p)

**Note:** See IRM 4.70.14.2.4.2.2, Procedures for IRA-based Plans Found to Be in Non-compliance and Not Resolved Through a Closing Agreement, for procedures for non-compliant plans not corrected through Audit CAP.

- (12) Address income and excise tax issues not resolved through Audit CAP or a DO 8-3 closing agreement, through either or both the:

- Discrepancy adjustment program (for income tax adjustments)
- By securing a discrepancy adjustment (for IRC 4973 excise tax), and/or through securing delinquent Forms 5330 (for IRC 4979 excise tax).

**Note:** You should prioritize pursuing discrepancy adjustments for highly compensated employees (as defined by IRC 414(q)). Secure your manager's approval before initiating a discrepancy adjustment and document concurrence on Form 5464, (CCR).

**Note:** See IRM 4.70.15, Discrepancy Adjustments and IRM 4.70.14.2.1.2.4, Processing Agreed Forms 5330 and 990-T.

- (13) Generally, you should address income and excise tax issues only in open plan years (years where highly compensated employees' Form 1040 statutes are open), unless you determine the arrangement to be abusive and egregious.

**Note:** Get your group manager's approval to address issues in years where Form 1040 statutes are barred.

4.70.13.3.4.2  
(11-22-2023)  
**EO Function**  
**Examination of Books**  
**and Records**

- (1) An examination of books and records will establish whether:
  - a. An organization is both organized and operated for tax-exempt purposes.
  - b. Any related returns have been or need to be filed by the organization.
  - c. Any tax reported is reasonably correct.
- (2) Review the books and records to:
  - a. Verify that any changes made to organizing documents don't jeopardize the exemption.
  - b. Substantiate and expand information about the organization's activities.
  - c. Verify the accuracy of the return.
  - d. Verify that all appropriate returns are filed, and taxes are paid.
  - e. Determine whether taxes (income, employment, excise) are accurately reported.
- (3) While reviewing books and records, keep in mind the Protecting Americans from Tax Hikes Act of 2015 (PATH Act), P.L. 114-113 requirements:
  - a. The PATH Act requires all revocations to be treated the same.
  - b. All revoked exempt organization now have declaratory judgment rights. Therefore, you are strongly encouraged to create an administrative record file or folder at the beginning of every 501(c) and (d) exam and to keep it up to date as the examination develops.
  - c. While you aren't required to create an administrative record file or folder until there are indications of a proposed revocation or an adverse change in foundation status, it works to your benefit to start one early. See IRM 4.70.14.2.4.1.3, EP & EO Administrative Record, and IRM 4.70.14.2.4.1.5, EP & EO Examiner's Responsibility.
- (4) Review the following books and records as appropriate:
  - Governing instruments and amendments
  - Organization's determination letter and application
  - Minutes
  - Publications (websites, newsletters, brochures, pamphlets, etc.)
  - Operating manuals
  - Contracts
  - Leases, mortgages, and loans
  - Deeds or other title documents
  - Correspondence files
  - Financial records (chart of accounts, trial balance, income statement, balance sheet, general ledger, transaction journals, etc.)
  - Third-party records (bank statements, brokerage statements, invoices, receipts, etc.)
  - Other filed federal returns
- (5) If you have requested and received any of these documents during the planning phase, review them before the initial appointment. For pre-contact analysis procedures, see IRM 4.70.12.3.
- (6) You have the discretion as to the order in which you exam these records. The following sections outline a suggested order of action.
- (7) When two or more EO examiners are involved in an examination, the examiner assigned to the case decides the order of procedures to follow.

## 4.70.13.3.4.2.1

(11-22-2023)

**Governing Instruments**

- (1) Review the organization's governing instruments to identify:
  - a. Any amendments or changes that would jeopardize the organization's exempt status.
  - b. Any committees with special responsibilities.
  - c. Who controls the organization, both ultimately and in day-to-day operations.
  - d. Duties of officers (i.e., who is authorized to disburse funds, who makes decisions affecting the operations of the organization).
- (2) Prepare separate work papers for the articles and bylaws and make corresponding entries on Form 5773. Address any amendments to these documents in the specific work papers, and summarize them on the Form 5773, section B-5, Amendments [Organizational Documents and Rulings].

**Note:** For an unincorporated organization, trust, or an organization chartered by a parent organization, analyze the articles of association, trust instrument, or charter respectively. Then make corresponding entries on Form 5773, section B-1, Articles of Incorporation.

- (3) If an organization (e.g., IRC 501(c)(3), IRC 501(c)(4), IRC 501(c)(19) ) fails the organizational test, discuss the issue with your group manager via securely email or phone call while in the field. The manager, examiner, and Area Counsel, if necessary, will discuss possible remedies.

**Note:** Propose revocation only after consideration of all other facts in the case (e.g., abusive transactions, failure to operate in an exempt manner, inurement).

- (4) Organizations exempt under IRC 501(c)(3), 501(c)(9), and 501(c)(17) are required to file a determination application that includes the organizing documents before receiving a determination letter. Organizations exempt under all other code sections don't have to file an application for exemption before filing the Form 990, Return of Organization Exempt From Income Tax.

**Note:** There are no determination files for the specific entities exempt under a group ruling (identified by the group exemption number (GEN) on **INOLES/BMFOLO**). See IRM 4.70.13.3.4.2.2.1, Organizations Covered by a Group Ruling for examination procedures specific to group rulings.

## 4.70.13.3.4.2.2

(11-22-2023)

**Determination Letter and Application**

- (1) The determination letter and application are parts of the EO microfiche file kept at the Cincinnati offices. Request the microfiche file before you visit the organization:
  - a. If received, review the determination letter and application during the planning phase to help you identify any large, unusual, or questionable items.
  - b. If unavailable, review the determination letter and application at the organization.
- (2) Determination letters may vary depending on which office issued them and when:
  - a. Determination letters issued before 1954 reference IRC sections that predate IRC 501.

- b. Determination letters issued from National Office Rulings and Agreements may differ in language from those issued from the Tax Examination Determination Systems/Exempt Determination System (TEDS/EDS) system used by determination groups in Rulings and Agreements.
  - c. See IRM 7.21.5, Exempt Organizations Determinations Processing, Determination Case Processing Assistance, for the various types of letters issued by determination groups.
- (3) Reviewing the determination file may identify:
  - Earlier legal names of the organization.
  - Prior addresses.
  - Return filing requirements.
- (4) Attached addendums address issues the determination specialist identified.
 

**Example:** An addendum attached to a determination letter sent to a 501(c)(3) public charity discusses the possibility of Unrelated Business Income Tax (UBIT) generated by a proposed activity.
- (5) Reviewing the determination application identifies the activities conducted or proposed at the time of the application. Organizations however, frequently change activities over time. A complete change in activities and purposes may indicate a misleading application.
 

**Example:** A 501(c)(3) private foundation is established with the intention of giving college scholarships to students for a particular field of study on the basis of merit or financial need. The exam finds that the only children benefiting are those of the founder and other substantial contributors.
- (6) Organizations are required to provide copies of their determination application (including determination letter), and their three most recently filed Forms 990, upon request from the general public (IRC 6104(d)). Form 990-T, Exempt Organization Business Income Tax Return, of organizations exempt under IRC 501(c)(3) is a required publicly disclosed form (Pension Protection Act of 2006). For further information, see Pub 557, Tax-Exempt Status for Your Organization.
- (7) The IRS may apply penalties under IRC 6685 for failure to make the documents available for public inspection. See IRM 20.1.8.3.4, IRC 6685 - Failure to Comply with the Public Inspection Requirements for Certain Tax Exempt Organizations for guidance in assessing the penalty.
- (8) Subordinates who obtain a separate determination letter are no longer included under the group ruling. The subordinates will lose their individual determination letter if they join a group ruling period. See IRM 7.2.0.4.4(5).
- (9) Status 36 organizations are organizations other than IRC 501(c)(3), IRC 501(c)(9), and IRC 501(c)(17) obtain their tax- exempt status by declaring they are exempt on the F990, F990EZ, or on F8976 without applying for a tax-exempt status and do not have a determination letter.

4.70.13.3.4.2.2.1  
(11-22-2023)

**Organizations Covered  
by a Group Ruling**

- (1) This section focuses on an examiner's responsibilities for examinations of organizations under a group ruling. It addresses these topics:

- Group rulings' various structures
- Group rulings' filing requirements
- Special procedures for specific issues
- Statute requirements

**Note:** For guidance on Revocation or Termination of Organizations Covered by a Group Ruling, see IRM 4.70.14.2.1.3.4.

- (2) During an examination, examiners are responsible for determining if the organization:

- a. Meets the requirements for exemption under a group ruling.
- b. Meets the requirements as a central or parent organization.
- c. Filed all required tax and information returns.
- d. Reported information and tax liabilities correctly.

4.70.13.3.4.2.2.2  
(11-22-2023)

**Organizational  
Structures**

- (1) A "central" or "parent" organization is an organization recognized as exempt that has one or more subordinates under its general supervision or control. The central organization that holds a group exemption (not the IRS) determines which organizations are included as subordinates under its group exemption ruling.

- (2) A "subordinate" may consist of a:

- Chapter
- Local
- Post, or
- Unit of a central organization.

- (3) A subordinate may or may not be incorporated, but it must have an organizing document.

- (4) Central organizations must establish that each of the subordinates included in the group ruling meet all these criteria:

- a. Affiliated with the parent at the close of its annual accounting period.
- b. Subjected to the parent's general supervision or control.
- c. Exempt under the same paragraph of IRC 501(c) as the other subordinates.
- d. Not organized or operated as a private foundation.
- e. Not organized and operated in a foreign country.

**Note:** The central organization doesn't have to be exempt under the same paragraph of IRC 501(c) as its subordinates. The subordinates must be exempt under the same paragraph of IRC 501(c).

- (5) See IRM 25.7.3.1.1, Group Exemption Requirements, for a discussion of other requirements for exemption of the subordinates.



4.70.13.3.4.2.2.3  
(11-22-2023)  
**Examination  
Considerations**

- (1) Group rulings present unique situations:
  - a. Central organization can add and remove subordinate organizations from a group ruling, simply by updating their annual list of subordinates.
  - b. The IRS can terminate the exemption for a subordinate organization or the central organization or can terminate the group ruling in its entirety.
- (2) You can't modify a subordinate organization's exempt status without modifying the group ruling itself. To terminate the exempt status of a subordinate is to remove it from the group ruling. If a subordinate fails to qualify for tax-exempt status under the same paragraph of IRC 501(c) as the other subordinates in the group, you must remove it from the group ruling, even if it may qualify for another paragraph in IRC 501(c).

**Example:** ABC, a veterans' organization, is a subordinate organization covered by a group exemption ruling held by its parent organization. All subordinates in the group are exempt under IRC 501(c)(19). ABC's Form 990 for 201812 is under examination. The examiner determines that ABC doesn't meet the requirements of IRC 501(c)(19) because it fails the membership tests. ABC does, however, qualify for tax-exemption under IRC 501(c)(4). Accordingly, you must propose revocation under IRC 501(c)(19), remove it from the group ruling, and encourage it to apply for tax-exempt status under IRC 501(c)(4).

- (3) Subordinates who obtain a separate determination letter are no longer included under the group ruling. The subordinates will lose their individual determination letter if they join a group ruling. See IRM 7.20.4.2.4, Group Ruling (GEN) Subordinates.
- (4) Administratively, group rulings result in fewer applications for exemption. Subordinates of a group ruling can also opt to reduce the number of information returns by filing a group return. See IRM 4.70.13.3.4.2.2.4, Group Returns.
- (5) Group rulings also complicate the issue of the statute of limitations. See IRM 4.70.13.3.4.2.2.5, Determination of Filing Date:
  - a. Which return(s) start the running of the statute of limitations?
  - b. Who is authorized to sign an extension?
  - c. Who signs when the organization under examination filed via a group return?
- (6) Group rulings also modify the notification procedures. The IRS must, in certain situations, contact the central organization.

4.70.13.3.4.2.2.4  
(11-22-2023)  
**Group Returns**

- (1) A central organization may file, under 26 CFR 1.6033-2(d), in addition to its own annual information return, a group return on behalf of two or more of its subordinate organizations covered by a group ruling:
  - a. Affiliated with the central organization at the close of its annual accounting period.
  - b. Subjected to the general supervision or control of the central organization.
  - c. Exempt under the same paragraph of IRC 501(c) as the other subordinates.
  - d. Filed based on the established annual accounting period of the central organization.

- (2) The group return may include only those exempt subordinates that have authorized in writing, the central organization to include them in the return. The subordinates must submit to the central organization statements specifying their gross income, receipts and disbursements, as well as such other information relating to them as is required to be stated in the group return.
- (3) A central organization that files a group return must attach to the return, a schedule of the subordinates' names, addresses and employer identification numbers, for both the subordinates included and not included in the group return.
- (4) Any subordinates not included in a group return are subject to the standard filing requirements and must file one of the following forms, as appropriate:
  - Form 990, Return of Organization Exempt From Income Tax
  - Form 990-EZ, Short Form Return of Organization Exempt From Income Tax, and
  - Form 990-N, *e-Postcard*.
- (5) The central organization may not include itself on the group return. The central organization must file its own separate return. See 26 CFR 1-6033-2(d).
- (6) If the central and/or subordinate organizations are subject to unrelated business income tax or other taxes, they must file their own Forms 990-T or other tax returns. The group return may reflect a consolidated amount of unrelated business income in the Form 990 Part VIII, Statement of Revenue.

4.70.13.3.4.2.2.5  
(11-22-2023)

#### Determination of Filing Date

- (1) The following rules should generally be used for determining the filing date of the return:

IRC 7502. Timely Mailing Treated as Timely Filing and Paying		
If the return is postmarked:	And the return is received:	The Filing Date is Then:
On or before the normal due date	Before, on or after the normal due date	Normal due date
After the normal due date (No extension)	After the normal due date	Service Center received date
On or before the extension date (After the normal statute date)	On or before the extension due date	Service Center received date
On or before the extension date (After the normal statute date)	After the extension due date	Postmark date
After the extension date	After the extension due date	Service Center received date

- (2) The central organization is subject to the standard filing requirements:

2010 Tax Year and later (Filed in 2011 and later)	Form to file
Gross receipts normally < \$50,000	990-N
Gross receipts < \$200,000, and Total assets < \$500,000	990-EZ or 990
Gross receipts > \$200,000, or Total assets > \$500,000	990
<b>Note:</b> Organizations eligible to submit the e-Postcard or file Form 990-EZ may choose to file a full return.	

- (3) A group return is always filed on a Form 990.
- (4) A central organization filing a group return on behalf of two or more affiliates uses a special Employer Identification Number (EIN) to file the group return. The organization is provided this special EIN with its group ruling letter. To research the EIN, use command code EOGEN (Exempt Organization Group Exemption Number) using the group exemption number (GEN) to find the EIN of the group return. Consult the Field Agent Support Team (FAST) if you can't find the EIN through regular IDRS research.

**Note:** EOGEN will tell you the parent and all the subs. You must look through all the subs until you find the one they are using to file the group return.

- (5) A subordinate organization may or may not be included on a group return. Review BMFOLT (Business Master File Online Transcript) on IDRS for the subordinate's EIN for the year in question. If a subordinate has been included on the group return, BMFOLT reflects a transaction code (TC) 590 and closing code (CC) 14. The transaction will also reflect a "PAR EIN XX-XXXXXXX".
- (6) If a subordinate claims to have been included on a group return, but IDRS doesn't show a TC 590 CC 14, secure a copy of the group return via *Online SEIN*. Review the return to see whether the subordinate is listed as included on the group return. Contact the FAST unit to request them to input TC 590 CC 14.

**Note:** If a central organization doesn't include the subordinate on the list of subordinates it annually files with the IRS, the subordinate isn't recognized as part of the group exemption. In this situation, the subordinate's status on BMFOLO (Business Master File Online Organization)/INOLES (Online Entity) is 28 and is subject to a Form 1120 filing requirement.

- (7) If included on a group return, the subordinate's statute of limitations is based on the group return. See IRM 4.70.13.3.4.2.2.5 para (1) to determine the statute of limitations. If the subordinate is not included on the group return, it is subject to normal filing requirements. See IRM 4.70.13.3.4.2.2.5 para (2) for the filing requirements. If no return is filed, secure a delinquent return. See IRM 4.70.13.9, Delinquent, Amended and Substitute for Return Procedures.

**Note:** If the subordinate is neither included on a group return nor files its own return for three consecutive years, the organization is subject to auto revocation. If auto revoked, the subordinate may apply for reinstatement of its exempt status. Don't secure a delinquent return in these situations. If the parent organization fails to file its own return for three consecutive years, the parent organization is automatically revoked, and the entire group ruling is terminated.

4.70.13.3.4.2.2.6  
(11-22-2023)

#### Extending the Statute of Limitations

- (1) Request a statute extension if the case is subject to Mandatory Review and there are less than 395 days remaining on the statute of limitations. If not subject to Mandatory Review, ensure that you close the case to the Closing Unit with 180 days remaining on the statute.
- (2) See below for officers authorized to sign a consent:

If examining a	Authorized to sign consent
Subordinate organization's own Form 990 series return	Officers of the subordinate. If authorized, officers of the central organization may sign on behalf of the subordinate.
Central organization	Only officers of the central organization.
Group return	Officers of the central organization. Use the special EIN of the group return. <b>Note:</b> In some circumstances, contact Area Counsel when the subordinates are separate legal entities, such as corporations, trusts or other entities.

- (3) In all situations, if there's a duly authorized valid Power of Attorney, the POA may sign the consent on behalf of the organization. Attach a copy of the signed Power of Attorney to the signed consent form.

4.70.13.3.4.2.3  
(11-22-2023)

#### Minutes

- (1) Review minutes for the year under examination, prior years, and subsequent years. At a minimum, review at least the year before and the year after the return under exam. Expand the review as circumstances warrant.

**Note:** The organization may challenge your request to review the minutes of a year not under exam. If so, explain that you're concerned about any activities of the year under exam that started, carried on, or concluded in a prior/subsequent year. Or, obtain managerial approval to expand the examination to prior and subsequent years.

- (2) Consider appropriate follow-up discussions about:
  - a. Proposed or past activities, which may violate requirements for exempt status or constitute unrelated trade or businesses.
  - b. Transactions which may serve the private interests of the trustees, directors, officers, or private individuals.

c. Transactions with related entities.

- (3) Review the minutes of any subcommittees (for example, executive, audit, finance, and compensation committees).

**Note:** In cases involving IRC 4958, excess compensation determinations, make copies of the meeting minutes of the board, executive, and compensation committees, for use in the examination report.

- (4) Consider all attachments, exhibits, and reports as part of the minutes. If the organization doesn't provide these with the minute book, request them as an integral part of the minutes. This also includes correspondence referred to in the minutes.

**Example:** The organization's set of minutes mention a written report provided during a meeting. The minutes however don't include the report. When you ask for the report and read it, you find details of a questionable transaction with an insider that isn't mentioned in the minutes.

- (5) Use dates listed in the minutes to identify time frames for document sampling.

**Example:** The organization's minutes mention the awarding of a scholarship in the minutes as occurring on August 5th. You request the ledger and journal entries for that date and find the scholarship check written to the individual and not to the college. You then decide to request copies of the college transcript and/or other reports that the granting organization should keep.

4.70.13.3.4.2.4  
(11-22-2023)  
**Publications**

- (1) Review any websites maintained by the taxpayer:
  1. Review the current and past website due to the ever-changing content of websites.
  2. Review a printout of the taxpayer's website as it appeared during the period(s) under examination, if possible.
- (2) If the organization has no printouts of the website as it appeared during the year(s) of examination, log onto web.archive.org. This website captures and presents various websites as they appeared at different times in the past. Although this website doesn't provide a 100 percent recapture, it's substantial.

**Note:** Links in the old archives won't work because they're no longer active.

- (3) Links to other websites may indicate:

- Advertising
- For-profit ventures
- Other sources of UBI
- Signs of inurement

**Note:** If these links exist, request documentation of any emails, correspondence, contracts, and agreements entered into for each questionable link.

- (4) Review newsletters, pamphlets, brochures, magazines, annual reports, and similar items and determine whether the publication:

- a. Furthers the exempt purpose of the organization.
- b. Contains advertising.
- c. Includes indications of legislative or political activity.

(5) Discuss any issues arising from reviewing publications to determine if there's additional supporting documentation, including:

- Advertisement pricing charts
- Advertising contracts
- Lobbyist contracts
- Other pertinent documents

4.70.13.3.4.2.5  
(11-22-2023)  
**Operating Manuals**

- (1) Review the following, if pertinent:
  - Any operating manual
  - Employee handbooks
  - Instruction booklets
  - Other materials outlining procedures performed in the course of business
- (2) Certain issues, (for example, worker classification, tip reporting, and UBI), require an in-depth review of any manuals. You may need to photocopy relevant portions.

**Example:** An organization treats all workers (including corporate officers) as independent contractors, issuing Form 1099-NEC, *Nonemployee Compensation*, to all individuals. The organization provides employee handbooks, operating manuals, training guides, and expense reimbursement instructions for vouchers.

- (3) Consider requesting copies of relevant section of operating manuals in electronic format. If available, use a scanner to scan the portions into an OCR (optical character recognition) format, and insert it into a Word document.

4.70.13.3.4.2.6  
(11-22-2023)  
**Contracts**

- (1) Consider reviewing contracts, particularly those with officers, directors, trustees, and key employees. Determine whether:
  - Private individuals are receiving any form of inurement.
  - The organization has executed any agreements not in furtherance of its exempt purpose.

**Example:** An IRC 501(c)(10) fraternal organization has contracted with an insurance company to provide group term life insurance, at the organization's expense, to the officers of the lodge.

**Example:** An IRC 527 political organization, established by an IRC 501(c)(5) agricultural organization, enters into a contract with a registered lobbyist. The contract specifies that the lobbyist will communicate with members of the US Congress on the issue of farm subsidies.

- (2) Review copies of contracts and agreements to determine whether payments are at fair market value and at arm's length.

**Example:** The president/executive director of an IRC 501(c)(6) chamber of commerce executes a contract to purchase property from the chamber.

The president signed the contract as both president and as purchaser. The price agreed upon was less than the value shown on the property tax statement.

- (3) Obtain and review contracts for any such agreements for consideration of whether UBI may be present. The organization may act as a tenant/landlord for businesses, individuals, and other exempt organizations, or may have contracts for services provided to the organization.

**Example:** An IRC 501(c)(8) fraternal organization has a contract with a vendor who provides catering services for functions held at the lodge when the lodge is rented out to both members and non-members.

4.70.13.3.4.2.7  
(11-22-2023)

**Leases, Mortgages, and Loans**

- (1) Consider reviewing questionable leases, mortgages and loans, particularly those with officers or other related parties, to determine whether:
1. Private individuals are receiving any form of inurement.
  2. The organization has executed any agreements not in furtherance of its exempt purpose.

**Example:** An IRC 501(c)(4) social welfare organization leases a bingo hall from one of its board members, who also has a contract to operate the bingo hall on behalf of the organization. The costs of the lease and bingo operation consume 95% of the bingo receipts.

- (2) Review copies of these documents to determine if payments received represent fair market/rental value and whether the transaction was made at an arm's length:
- Mortgages
  - Notes payable
  - Notes receivable
  - Loans
  - Leases

**Example:** An IRC 501(c)(5) labor union has a note receivable from the organization's treasurer for a five-year \$25,000 note. The note doesn't require monthly payments and interest is determined by the current savings rate offered by a local bank.

**Example:** An IRC 501(c)(12) mutual irrigation company has a note payable with a director of the organization. The note payable is for services rendered to the organization as a consultant for irrigation planning. The director owns a local farm that is coincidentally located next door to the waterworks building of the company.

4.70.13.3.4.2.8  
(11-22-2023)

**4.70.13.3.4.2.8 Deeds or Other Title Documents**

- (1) Review the organization's title documents to verify:
- a. Ownership of any real property by the organization
  - b. From whom the property was acquired
  - c. The date of acquisition



**Example:** An IRC 501(c)(3) private foundation holds title to a building used as a museum, open to the public. The title document shows that the property was purchased from the founders of the foundation.

- (2) Obtain copies of the purchase and sale agreements, or other contracts if you have questions after reviewing the title documents. Review the agreements for:
  1. Details on the terms of the purchase and sale
  2. The financing arrangements
  3. Any additional considerations provided for the property
  4. Information to determine if the purchase was at fair market value

**Example:** An IRC 501(c)(21) black lung trust purchased a building to house its administrative services. The coal mine operator who established the trust previously owned the building. The trust paid for the building in-full at the time of purchase, resulting in no mortgage.

4.70.13.3.4.2.9  
(11-22-2023)

#### Correspondence Files

- (1) Consider reviewing correspondence files. They usually fall into four categories:
  - Letters soliciting funds for projects
  - Correspondence that identifies the type of organizations or activities supported by the funds solicited
  - General correspondence that identifies other activities carried on for or on behalf of the organization or related parties
  - Correspondence with the IRS

**Example:** Letters issued by an IRC 501(c)(6) sport fisherman's association to thank local businesses for their contributions of services during a fishing derby. The letters identify values for the services provided and state that the contributions are tax deductible.

**Example:** A series of emails provided in a referral package from an inside informant documents transactions in which the vice president of a college purchased airline tickets at first class ticket prices. The VP then had the tickets converted to coach class and received half of the refunded amount from the travel agent.

**Example:** The website for an IRC 501(c)(3) religious organization offers certificates of ordination for a \$35 fee. The website generates a letter that is emailed to the purchaser thanking them for their tax-deductible contribution.

- (2) Review current correspondence with the IRS. Help the organization resolve any outstanding notices or other problems with the IRS.

4.70.13.3.4.2.10  
(11-22-2023)

#### Financial Records

- (1) A review of the financial information:
  - a. Reveals important information about the organization's activities.
  - b. Verifies information reported on the tax return is correct.
  - c. Determines the strength or weakness of the internal controls.
- (2) Consider following these procedures:
  - a. Reconcile the books to the return

- b. Compare prior and subsequent year income, expenses, assets, and liabilities
- c. Review chart of accounts
- d. Review year-end trial balance
- e. Review auditor's report
- f. Review audited financial statements and management reports
- g. Analyze income and expenses
- h. Analyze the balance sheet
- i. Test sample transactions for LUQs
- j. Ensure an accurate return is filed

**Note:** Consider requesting financial records during the planning phase and analyzing them before the exam. This helps reduce the case cycle time.

4.70.13.3.4.2.11  
(11-22-2023)

**Definitions**

- (1) **Tax reconciliation work papers:** work papers used in preparing a return, such as the trial balance. You can frequently use these work papers to trace financial information to the return.
- (2) **Audit work papers:** work papers kept by an independent accountant with details of the following items used in his/her audit:
  - Procedures followed
  - Tests performed
  - Information obtained
  - Conclusions reached
- (3) **Examples of audit work papers:**
  - Work programs
  - Analyses
  - Memorandums
  - Letters of confirmation and representation
  - Abstracts of organization/plan documents
  - Schedule or commentaries prepared or obtained by the auditor

**Note:** These work papers ensure the audit work was done in conformity with generally accepted accounting principles and demonstrate compliance with the generally accepted auditing standards.

4.70.13.3.4.3  
(11-22-2023)

**ITG Function  
Examination of Books  
and Records**

- (1) You're authorized to request and receive books, records, etc., necessary to properly examine an entity's tax return (IRC 7602, Examination of Books and Witnesses, and 26 CFR 301.7602-1(a), Examination of Books and Witnesses.)
- (2) Insist courteously for the records, even when a taxpayer is reluctant to provide them. Follow these guidelines to handle this situation:
  - 1. Apprise the taxpayer of the requirements to produce books and records. Explain that denying access to the records only prolongs the examination/investigation because we'll initiate third party inquiries and this further lengthens the process.
  - 2. Don't attempt to mislead or misrepresent the examination/investigation scope to secure records.
  - 3. Don't assert your authority in a manner that could be interpreted as a threat.

4. Don't summons the records unless you obtain your manager's approval.

- (3) Accountant's workpapers used to exam tax records or prepare a tax return aren't the taxpayer's property or privileged information. Therefore, you can summon the workpapers.
- (4) See IRM 4.10.20, Requesting Audit, Tax Accrual, or Tax Reconciliation Workpapers.

#### 4.70.13.3.4.4

(11-22-2023)

#### **TEB Function Examination of Books and Records**

- (1) Generally, a tax-advantaged bond exam is conducted to determine compliance with federal tax laws and regulations. Records of the issuer, conduit borrower, and other parties to the transaction are the primary sources of information available for review during an exam. You should identify and review records necessary to determine compliance.
- (2) The issuer of the tax-advantaged bond is treated as the taxpayer throughout the exam process. The issuer is responsible for maintaining and producing adequate records to substantiate the tax-advantaged status of the bonds. Generally, other parties to the transaction, including conduit borrowers, will also maintain records and might do so as part of a contractual agreement with the issuer.

#### 4.70.13.3.4.4.1

(11-22-2023)

#### **Determination of Appropriate Records to Review**

- (1) During an exam, you may review any records necessary to make a bond tax compliance determination. Consider exam scope, depth and the type of bond under examination when you determine the books and records to review. Generally, when applicable to the case and its scope, review documents and records described in this section and other documents and records as relevant to the exam.
- (2) The bond transcript and other documents in the bond issuance closing file will likely document compliance with requirements that apply when the bonds are issued and, unless amended, apply for the life of the bonds.
- (3) For post-issuance compliance matters (for example, expenditure, investment and use of bond proceeds), review post-issuance records and records that substantiate compliance with applicable requirements.
- (4) Review records substantiating the following matters:
  - a. Compliance with applicable requirements when the bonds were issued.
  - b. Sources and uses of bond proceeds.
  - c. Allocations of bond proceeds to expenditures, investments, or other uses.
  - d. How the facilities financed by the bonds were used.
  - e. How the bond proceeds were invested before being used.
  - f. How payments were made on the bonds, including sources of payments.
  - g. Any post-issuance changes to bond documents, related contracts, or projects financed with bond proceeds.
- (5) Review records that substantiate how bond proceeds were spent. These include records substantiating:
  - a. The amount, date and payee of expenditures, including invoices and checks.
  - b. The separate project to which the expenditure relates or the purpose of each expenditure.

- c. Computations of the average reasonably expected economic life of any assets financed with proceeds of the bonds.
  - d. The date the project/facility was placed in service.
  - e. Equity contributions.
  - f. Proceeds used for working capital purposes: cash flow statements, financial statements and other records that establish compliance with the applicable requirements or exceptions.
- (6) Review records pertaining to the investment of gross proceeds of an issue. These records should include the following investment information:
- Funds to which the investment is allocated (for example, construction fund, debt service fund, reserve fund, and escrow fund).
  - Investment agreements (including repurchase agreements).
  - Purchase price (including the amount of accrued interest stated separately).
  - Nominal rate of interest.
  - Par or face amount.
  - Purchase date.
  - Maturity date.
  - Amount of any original discount or premium.
  - Investment type (for example, Treasury securities, banker's acceptance, investment contract, commercial paper, tax-exempt bonds and SLGS).
  - Frequency of periodic payments (and actual dates and amounts of receipts).
  - Compounding period.
  - Date of sale or other disposition.
  - Amount realized on disposition (including the amount of accrued interest stated separately).
  - Transaction costs (for example, commissions) incurred in acquiring, carrying, or disposing of the investments.
  - Substantiation of whether the investments were acquired and disposed of at fair market value.
  - Escrow agreements and restructured escrow agreements.
- (7) Review records pertaining to the use of bond-financed facilities or property, including:
- Contracts, leases, or other documents substantiating use of the financed facilities, including detailed records taxpayers maintain on use.
  - In the case of a qualified 501(c)(3) bond, records sufficient to identify any use in an unrelated trade or business, regardless of the terms of an arrangement.
  - In the case of bonds that are required to have proceeds used for specified purposes (for example, certain qualified private activity bonds and tax credit bonds), records that substantiate compliance with that required use.
  - Management contracts, rental agreements and other third-party contracts useful in the determination of private use.
  - Records to establish the issue price of the bonds.

4.70.13.3.4.4.2  
(11-22-2023)

**Common Records**

- (1) Issuers frequently keep and can provide a bond transcript with:
  - Applicable legislation
  - Agreements
  - Certifications
  - Legal opinions
  - Documentation that verifies compliance with applicable tax and statutory requirements
  - Other information about the bond issue
- (2) A trustee is involved with most tax-advantaged bond issuances.
  1. **Transactional records:** That trustee likely maintains transactional records on the investment and use of bond proceeds.
  2. **Conduit Borrower records:** In conduit issues (for example, certain types of qualified private activity bonds), the conduit borrower maintains some records.
  3. **Third-party Contacts:** Trustees, conduit borrowers, and any party other than the issuer are considered third- parties in a tax-advantaged bond examination.
  4. See IRM 4.70.11.11, Third Party Contacts, for procedures relating to third-party contacts.
- (3) These records are often important to review in an exam of a tax-advantaged bond issue, but they are not all-inclusive:
  - Official statement or other disclosure document (for example, a private placement memorandum)
  - Trust indenture (or other document providing terms of the bonds such as the trust agreement or authorizing resolution/legislation)
  - Loan agreement
  - Bond counsel's opinion and other tax opinions
  - Arbitrage certificate (or tax certificate) and any other agreements, certifications, or documents related to the tax status of the bonds (for example, TEFRA approval, volume cap allocation certificates, notice of official intent to reimburse, and arbitrage rebate calculations)
  - Bond purchase agreement
  - Investment agreements and related tax certifications
  - Swap agreements (including the master agreement, schedule, credit support annex, confirmations, and related definitions) and related tax certifications
  - Reimbursement agreements
  - Remarketing agreements
  - Related tax returns (for example, Form 990, Form 1120, 1120-S, Form 1065, and Form 1040) and related depreciation schedules
  - Continuing disclosure filings
  - Management contracts
  - Research contracts
  - Leases
  - Deeds
  - Financial records accounting for bond proceeds
  - Trustee statements
  - Bank statements
  - Requisitions
  - Invoices
  - Blueprints and floor plans

- Trade tickets
- Public notices and meeting transcripts or minutes

4.70.13.3.5  
(11-22-2023)  
**Reconciliation of Books  
and Records**

- (1) The burden is on the taxpayer to arrange books and records, as well as prepare summaries and reconciliations.
- (2) Reconciliation of books and records traces the process the taxpayer used to prepare a return and/or maintain their tax-exempt classification, if applicable. This also ensures all transactions recorded in the books were reported on the return.
- (3) Prepare a work paper showing the reconciliation and index it to the TE/GE Workpaper Summary.

**Note:** If you can't reconcile the books and records to a return and/or tax-exempt requirement, this may indicate a lack of internal controls or the use of improper accounting procedures. Carefully consider the amount of deviation; a small percentage may mean the difference is immaterial.

- (4) For larger taxpayers, reconciliation can be time-consuming. For these cases, consider reconciling only those items identified as LUQ and/or use sampling. See IRM 4.70.13.3.7, Sampling Techniques

**Note:** If you're unable to reconcile the return and/or tax-exempt requirement to the books and records, this is a red flag and warrants a more in-depth examination.

- (5) Review any reconciliation work papers provided by the Taxpayer.
- (6) Review any adjusting journal entries or reclassifications. If explanations of the adjusting entries and/or reclassifications aren't straightforward, request written explanations.
- (7) Identify and explain any material differences between the books and return or tax-exempt requirement.

4.70.13.3.5.1  
(11-22-2023)  
**Accountant's  
Workpapers**

- (1) The following is a discussion of workpapers typically prepared by independent accountants:
  - a. Tax Reconciliation Workpapers: Workpapers used to assemble and compile financial data to prepare it to place on a return. Typically, these include a final trial balance and/or a schedule of adjusting entries. They include information used to trace financial information to the return.
  - b. Examination Workpapers: Documentation kept by an independent accountant as to the procedures followed, tests performed, information obtained, and conclusions they reached. They support the accountant's opinion as to the fairness of the presentation of the financial statements, conformity and compliance with generally accepted accounting principles.
  - c. Representation Letter: The 1998 Statement on Auditing Standards (SAS) No. 85 issued by the American Institute of Certified Public Accountants requires a CPA auditor to obtain client management's written representations for all financial statements and periods covered by the auditor's report. The statements include information concerning fraud, material errors, and the belief that the financial statements are fairly presented in conformity with Generally Accepted Accounting Principles (GAAP).

**Note:** The representation letter may be a privileged communication under IRC 7525.

- (2) Tax reconciliation workpapers, unlike audit workpapers, should be requested at the beginning of an examination. These workpapers are needed since they include the final amounts that should tie the filed return to adjusted trial balance to the general ledger.
- (3) Request and review the accountant's tax reconciliation work papers. They give you a good starting point for reconciling the return to the books.
- (4) Request tax reconciliation work papers at the beginning of the audit since they include the final balance tying the return to the general ledger and other analyses necessary to complete the return.
- (5) Ordinarily, tax reconciliation work papers are prepared and provided by the organization. However, if these work papers are unavailable from the organization, you can request them from the accountant.
- (6) Limit any requests for audit work papers to only those material and relevant to the audit. Determine whether an item is material based on your judgment and evaluation of the case's facts and circumstances.

4.70.13.3.5.2  
(11-22-2023)

#### Analysis of Accounts

- (1) You can perform the following procedures either during the pre-audit phase or in the field. Request the general ledger and chart of accounts in the initial information document. Request the organization to send these items before the audit if you plan to review them before the initial interview.
- (2) An organization's use of its resources is an important indicator of its programs and activities. During your review of the general ledger and chart of accounts, identify certain accounts to analyze to determine the source of the revenue or expenditures.
- (3) Look for any unusual (by amount, source or nature) or nonrecurring items. Examples include:
  - Unusual in amount - amounts which are much larger or smaller than typical entries to an account.
  - Unusual by source - "Source", as used here, means the journals from which the account was posted, as indicated in the folio column. There is a normal source pattern for most postings; investigate any deviations from the norm (e.g., a payroll entry in the office supplies account).
  - Unusual by nature - credit entries in accounts usually containing only debits or accounts that exist at the beginning of the year but not at the end.
- (4) Use these audit steps to review accounts:
  - a. Review year-end adjusting trial balance or similar summary of year-end general ledger account balances. Select LUQ accounts for further analysis.
  - b. Review transaction details in the general ledger for selected accounts.
  - c. Select samples of detailed transactions and trace to journals or other supporting documentation.
  - d. Discuss those items needing additional explanation with the organization.



- e. Request any additional documentation (e.g., sales contracts and mortgage documents) you need to determine the impact of a large or unusual transaction on the organization's exempt status or tax liability.

**Note:** Use judgment to decide which accounts, if any, to select for further analysis.

4.70.13.3.5.3  
(11-22-2023)  
**Income Analysis**

- (1) By reviewing the organization's income you can determine its accuracy, extent, and nature.
- (2) There are several purposes for analyzing income, including determining whether the income:

- a. Supports the exempt purposes of the organization.

**Example:** Income from government contracts to provide housing for mentally disabled individuals would support the exempt purposes of an organization formed to support the disabled.

- b. Is subject to unrelated trade or business, and/or excise taxes.

**Example:** Receipts from pull-tabs sold to the public are subject to UBIT, occupational and wagering excise taxes.

- c. Is from related parties, potentially giving rise to inurement.

**Example:** A church sells its parsonage to its pastor for \$1,000. The market value of the building is \$150,000.

- d. Is properly classified for purposes of various tests.

**Example:** An organization erroneously classified receipts from "social members" of a veterans post as member dues, when the bylaws explicitly prohibit social members.

- (3) Using the LUQ items you originally selected on the return during the pre-audit, select the corresponding accounts from the trial balance for further in-depth review. At the same time, review the trial balance for any additional LUQ items not previously identified.

- (4) The accounts selected will primarily depend on the type of organization audited.

**Example:** The investment income of an IRC 501(c)(7) organization is taxable, whereas the investment income of an IRC 501(c)(4) organization isn't.

- (5) See the appropriate guidance on specific types of income to consider examining.
- (6) Review the bank statements, bank reconciliations, and images of deposited checks, if available. Verify that the ending bank reconciliation balance matches up to the amount(s) reported on the return.
- (7) Trace sampled transactions from the general ledger to the bank statement, and vice versa.

**Example:** Trace a contribution recorded on the general ledger to the cash receipts journal, and in turn to a deposit slip, which matches up to the bank statement.

**Note:** Most bank imaging systems eliminated the need for deposit slips and deposit envelopes. Many banks also request clients to opt for online bank statements, in lieu of receiving printed materials. A taxpayer doesn't comply with the record keeping requirements under IRC 6001 and associated regulations if their electronic storage system doesn't meet the requirement of Rev. Proc. 97-22.

- (8) Select specific days for sampling sales of inventory, contributions, and program service revenues.

**Example:** A bingo hall is a cash intensive operation. By requesting to look at the Z tape (a summary tape generated by a cash register at the end of the day), you should find all of the days' receipts totaled. Trace these to a deposit slip for later that night or during the week, which should show up on a bank statement, as well as the general ledger and cash receipts journal.

#### 4.70.13.3.5.4

(11-22-2023)

#### Expense Analysis

- (1) Review an organization's expenses to:

- Determine the size, extent and nature of the expenses.
- Verify the amount reported is reasonably accurate.
- Verify the amount reported is correctly classified as an expense and not an asset (such as a prepaid expense).

- (2) When analyzing an expense, determine whether the expense:

- a. Is in furtherance of exempt purposes.

**Example:** An IRC 501(c)(19) veterans organization purchases new flags. By distributing them to local schools, collecting, and retiring the old flags, the expenditure serves a patriotic purpose.

- b. Gives rise to potential inurement.

**Example:** An IRC 501(c)(3) private foundation spends \$3,000 per person to send the founder and three other directors on a week-long board retreat in Hawaii. The foundation is located in the continental US.

- c. Is for a political and/or legislative expenditure.

**Example:** An IRC 527 political organization pays for signature gatherers to collect signatures for a ballot measure to repeal a tax voted into law by the state legislature. (This isn't a political expenditure, but is a legislative expenditure. It isn't expended for exempt purposes under IRC 527.)

- d. Gives rise to additional tax liabilities (Chapters 41 and 42).

**Example:** An IRC 501(c)(21) black lung trust lends \$5,000,000 in a five-year loan to the coal mine operator that created the trust, at an interest rate of 1 percent. The coal mine operator is subject to the IRC 4951 excise tax (computed in the same manner as IRC 4941).

- e. Triggers other filing requirements.

**Example:** An IRC 501(c)(10) organization employs a favorite band four times in a year for holiday dances, paying \$1,000 per performance, triggering the Form 1099-NEC filing requirement with the very first payment.

- f. Is properly allocated against any UBI.

**Example:** Form 990-T for an IRC 501(c)(3) educational organization that issues a monthly newsletter claims all of the expenses reported on the Form 990 against taxable advertising income, generating an enormous net operating loss deduction.

- (3) Using the LUQ items you identified during the pre-audit, select the corresponding accounts from the trial balance for further-in depth review. At the same time, review the trial balance for any additional LUQ items not previously identified.
- (4) Review the bank statements, bank reconciliations, and cancelled checks, if available. Match the checks/payments to invoices, receipts, or other documentation.
- (5) Trace sampled transactions from the general ledger to the bank/brokerage statements and vice versa.
- (6) Use credit card statements to trace to/from the general ledger expenses incurred by the organization's employees. Match those amounts against vouchers or other supporting documentation.

**Example:** In reviewing travel expenses, you track the entry on the general ledger to the travel account and from there to the travel voucher, and then match the expense to the bank statement.

**Note:** Travel expenditures for which there is no travel log, voucher, or other supporting documentation of a business purpose, may constitute taxable benefits to the employee, subject to employment taxes.

- (7) To detect possible inurement of income or serving of private interest, identify the board of trustees, directors, officers, and key members of the organization's staff. The Form 990 should list most of these individuals. Carefully analyze any business relationships or other dealings with these individuals to determine if they provide inappropriate benefits.
- (8) Determine the reasonableness of total compensation paid or accrued to principal officers. Consider any compensation claimed under a heading other than officers' salaries (e.g., contributions to pension plans, payments of personal expenses, year-end bonuses, use of company car).

**Note:** Look for multiple entity situations that split compensation between two or more related corporations. The aggregate amount paid may be excessive.

- (9) Review the following accounts, as they may disclose lobbying activity:
  - Advertising
  - Printing
  - Promotion
  - Outside services

- Legal and professional fees
  - Miscellaneous expenses
- (10) If auditing a membership organization (other than an IRC 501(c)(3) organization), review the following aspects of the organization's lobbying activities:
- a. The existence and extent of its involvement in "grassroots" lobbying, or lobbying in support of, or opposition to legislation not directly connected with the trade or business of its members.
  - b. Whether dues and other general funds or special assessments financed the lobbying activities.
  - c. Whether part or all of the dues or special assessments for the years involved were or were not properly deductible by the member per IRC 162(e)(2).
- (11) Review contract labor, repairs and maintenance, legal, consulting, and similar accounts for potential Form 1099 filing requirements. Consider the following:
- a. Payments to individuals that may result in a discrepancy adjustment (e.g., prizes and fees)
  - b. Additional compensation in the form of expense accounts
- (12) Analyze travel and other expense allowances. If the organization doesn't require the employee to file an expense account, the payments should be included in the recipient's gross income.
- (13) Refer to IRM 4.70.12.3.6, Required Filing Check, for additional information on required package audit procedures.
- (14) When reviewing UBI and expenses, verify:
- a. That expenses bear a primary and proximate relationship to the income.
  - b. That expenses are allocated on a reasonable basis.
  - c. The deductibility of any losses.
- (15) Organizations aren't required to use any specific allocation method. Rather, the only requirement is that the method reasonably approximate the costs incurred to generate the unrelated income. If the method used is unreasonable, identify and use a more accurate method to allocate expenses.

**Example:** An organization decides to use the margin (selling price – purchase price)/selling price) to allocate the fixed expenses of property tax and depreciation. You determine the method to be unreasonable and allocates the property taxes and depreciation by the combined percentage of total space used and hours of taxable operation.

4.70.13.3.5.5  
(11-22-2023)

#### Balance Sheet Analysis

- (1) Analyze the balance sheet to identify:
- a. Potential inurement, private benefit, or excess benefit transactions.
  - b. Assets generating UBI.
- (2) Analyze the changes in net assets/fund balances and in net worth. Reconcile any increases or decreases with the income and expense statements.
- (3) In reviewing assets:

- a. Identify and analyze receivables with officers, directors, or other persons in a position of control to determine whether the transactions serve private interests.
- b. Determine if the lack of intent to fulfill the obligations on the part of an officer or director has income tax consequences.
- c. Look for personal use of automobiles, houses and other assets.
- d. Look for rental property or property used in an unrelated trade or business.
- e. Look for investments that generate UBI.
- f. Analyze any disposition of assets for possible inurement to officials.
- g. Identify any loans that became delinquent or foreclosed during the years under audit.
- h. Identify receivables written off to determine if they were from an officer, director, trustee or key employee. This can also, in effect, be a reimbursement to the officer, director, trustee, or key employee for an illegal payment made on behalf of the organization.
- i. Review payables, loans, or other liabilities involving officers, directors, trustees, or key employees. These amounts may in fact be disguised compensation amounts or returns of assets to the founders/substantial contributors.

4.70.13.3.5.6  
(11-22-2023)  
**Tax Liabilities**

- (1) You should determine if the organization is liable for certain taxes and determine the correct amount of tax owed relating to:

<b>Taxes Owed For</b>	<b>IRC Section</b>
Unrelated business taxable income	511-514
Transactions by private foundations	4940-4945
Lobbying activities	4911-4912
Political activities	527(f) and 4955
Excess benefit transactions	4958
Employment taxes	3101, 3111, 3301, 3402, 3406, and 3509
Gaming activities	4401 and 4411
Proxy Tax on Lobbying and Political Expenditures	6033(e)(2)(A)
Black Lung excise taxes	4951 - 4953

- (2) Please refer to the appropriate Knowledge Networks (K-Net), Knowledge Networks site for guidance on computing specific taxes. Also see IRM 4.23, Employment Taxes.

4.70.13.3.6  
(11-22-2023)  
**Failure to Maintain  
Records**

- (1) Every taxpayer, whether an employee plan, exempt organization, individual, corporation or otherwise, is required by law and regulations to maintain accounting records sufficiently detailed to enable the preparation of a proper return. This requires the maintenance of such permanent books of account and records, sufficient to establish the amounts of income, deductions, credit, or other matters to be shown on the taxpayer's return. See IRC 6001.
- (2) IRC 6033 provides, in general, that every organization exempt under IRC 501(a) shall file an annual return, stating specifically the items of gross income, receipts, and disbursements, and such other information for the purpose of carrying out the Internal Revenue laws as the Secretary may by forms of regulations prescribe, and shall keep such records, render under oath such statements, make such other returns, and comply with such rules and Regulations as the Secretary may from time to time prescribe.
- (3) Treas. Reg. 1.6001-1(c) provides, in part, that organizations exempt from tax under IRC 501(a) shall "keep such books and records as are required to substantiate the information required by IRC 6033".
- (4) Taxpayers who maintain records in a machine sensible form can request a "record limitation retention agreement". This agreement would identify the machine sensible records to be retained or eliminated per the provisions of Rev. Proc. 98-25.
- (5) In any case where alternative methods are used to reconstruct the financial activities, workpapers must indicate that inadequate records notice provisions were considered.
- (6) If the taxpayer has failed to comply substantially with the law and regulations for maintaining adequate books and records or with record retention limitation agreements, discuss the inadequacies with your group manager to determine whether an inadequate records notice should be recommended. See IRM 4.10.8.15, Inadequate Records Notice, for procedural guidance.
- (7) The following items together constitute an **Inadequate Records Notice** (the Notice):
  1. Letter 4095, Exempt Organization Notice of Inadequate Records, signed by the manager.
  2. If agreed, a signed Form 2807, Agreement to Maintain Adequate Books of Accounts and Records.
  3. If unagreed, attachment titled, "Explanation of Inadequate Records". This notice must be sent by certified mail.  
  
**Note:** Explain the reason the records were inadequate on the top of the page. Copy the list of inadequate records from Form 2807, and paste them onto bottom half of the page.
  4. Attachment titled, "Applicable Provisions of the Internal Revenue Code and Regulations."
  5. Attachment titled, "Other Deficiencies Identified in the Examination".  
  
**Note:** List other defects noted in the examination on Form 886-A, similar to an enclosure with an advisory on Letter 1744, Change Due to Correction of Operations. These include examples such as engaging in excessive lobbying activities, or failure to file other returns. Title the attachment: "Other Deficiencies Identified in the Examination".

**Note:** If the determination involves a record retention limitation agreement, contact the computer examination specialist manager. See IRM 4.47.2.4, Record Retention & Evaluation Guidelines.

- (8) The determination of whether a taxpayer has maintained adequate records or has complied with a record retention limitation agreement is a matter of judgment based on the facts and circumstances of that case. Consider the following factors in reaching your decision:
  - a. Prior history and present degree of noncompliance
  - b. Indications of willful intent
  - c. Evidence of refusal to keep records
  - d. Other evidence of harm to the government
  - e. Probability that poor record keeping will result in significant changes to the return
  - f. Likelihood that compliance can be enforced if the taxpayer fails or refuses to correct the inadequacies
  - g. Anticipated revenue in relation to the time and effort required to obtain compliance
- (9) If the taxpayer has failed to maintain adequate books and records, discuss the matter with your GM to determine whether to issue an Inadequate Records Notice.
  - a. Document the following:
    1. The nature of the inadequacies of the taxpayer's records.
    2. Managerial discussions.
    3. The basis for the conclusion reached.
  - b. **EP:** When it is determined that an examination should be conducted of a return that is not yet due, prepare Form 5666, TE/GE Referral Information Report and email it to Classification.
  - c. **EO:** If you and your GM agree that an Inadequate Records Notice is appropriate, take the following steps:
    1. Prepare Form 2807.
    2. Include the date the taxpayer was verbally notified that the records were inadequate or not in compliance with a record retention agreement.
    3. Include the tax years examined.
    4. Include a description of the specific books and records.
    5. Include a clear and concise statement how the taxpayer's records were inadequate or not in compliance with a record retention agreement.
    6. Personally serve Form 2807 or send by certified mail. If you hold a closing conference with the organization, serve Form 2807 to an officer or trustee authorized to sign tax returns. Allow no more than 15 days.
    7. Solicit an agreement with the taxpayer on Form 2807.
    8. If the taxpayer doesn't sign Form 2807, discuss the facts and circumstances with your GM.

**Reminder:** Reminder: Document all managerial discussions.

9. Prepare Letter 4095 and ensure you print the attachments listed for paragraph 2 (of Letter 4095). Paperclip them to Form 2807.



10. Post a copy of Letter 4095 and its attachments to RCCMS Office Documents folder where closing letters would go according to case file assembly instructions.
11. Prepare referral Form 5666. State in the "Information Obtained" section of Form 5666 that the attached Letter 4095 package is documentation for an Inadequate Records Notice.

**Note:** Recommend a follow-up examination on Form 5666 for no less than two years subsequent to the year of the current examination.

12. Post Form 5666 to RCCMS Office Documents folder.
13. Issue Letter 4095 and its attachments to the taxpayer.
14. Use DC 52 (214), Change Due to Correction of Operations. Close the case to the EO closing unit.

- (10) If a decision is made that follow-up actions are necessary, the examiner (or Criminal Investigator, in joint investigations) will inform the taxpayer that the books and records are deemed insufficient for the preparation of a proper return or that the taxpayer has not complied with a record retention limitation agreement. Avoid criticizing the taxpayer's records or the work of employees, accountants, or attorneys.

4.70.13.3.7  
(11-22-2023)

#### Sampling Techniques

- (1) Some smaller taxpayers have a volume of records you can review in the span of a day or two. Other taxpayers have far too many records to review in the limited time spent at an exam site. Sampling is a technique examiners use to handle larger volumes of records and data. Sampling of records provides:
  - An element of confidence in data recorded
  - Helps to identify issues to be addressed
  - Aids in recognizing fraud
- (2) The two basic types of sampling are:
  - a. Judgment
  - b. Statistical

4.70.13.3.7.1  
(11-22-2023)

#### Judgment Sampling

- (1) Judgment sampling requires you to use professional judgment to:
  - a. Perform the sampling procedure.
  - b. Evaluate the results of the sample.

**Note:** Judgment samples aren't statistically valid. If you find errors in a sampled set of records, consider expanding the sample size.

- (2) Judgment sampling methods include:
  - a. Block sampling - uses groups of continuous items selected from a record or class of records. The sample may include all items in a numerical or alphabetical sequence.

**Example:** You select one month or quarter of data to reach a conclusion about the data for the entire year. You review and compare the source documentation to records for the sampled period of time.

**Example:** You select every 5th item from a class of data to draw a conclusion about that class of data. You review and compare the source documentation to records for the sampled selection.

- b. Dollar limitation (or cut-off) sampling selects a minimum dollar amount (or some other significant data limitation) and creates a sample by selecting all items exceeding that dollar amount. This type of sampling prevents you from wasting time examining small and/or insignificant data.

**Example:** You choose to review transactions of \$1,000 or more. You review and compare all the source documentation and records for the sampled transactions.

**Example:** You choose to review data for all items meeting a specific statutory cut-off (could be dollar amount or situational fact). You review and compare all the source documentation and records for the selected sample that meets the statutory cut-off.

**Caution:** It is often helpful to perform dollar limitation sampling in conjunction with block sampling. Individuals who embezzle funds frequently do so in smaller amounts. Frequency of the transactions for the same amount may identify all but the most cautious embezzlers.

4.70.13.3.7.2  
(11-22-2023)  
**Statistical Sampling**

- (1) Statistical sampling is a procedure used to choose a portion of the whole to make a statement about the entire body of information. Statistical sampling allows each sampling unit to stand an equal chance of selection, eliminating your judgment on which items to sample.
- (2) Before performing a statistical sampling application discuss the facts and circumstances with your manager. Together you will determine whether to request a Computer Audit Specialist (CAS). Refer to IRM 4.47.3.2, Computer Audit Specialist, Statistical Sampling Audit Techniques, for instructions on requesting CAS assistance.
- (3) The burden of proof is placed on the IRS in any court proceeding when the IRS reconstructs any item of income by using statistical information only on unrelated taxpayers (IRC 7491(b)).

4.70.13.3.8  
(11-22-2023)  
**Concluding the Initial Appointment and Additional Requests for Information**

- (1) At the conclusion of the initial appointment, or after your review of the initial IDR response, conduct an exit interview/conference with the taxpayer or taxpayer's representative to discuss:
  - Unresolved issues and additional documents you need
  - Any additional items requested in a subsequent IDR, if issued
  - The next steps involved in the examination
  - A date when the organization can reasonably expect to hear from you next
  - Any remaining questions the organization may have
- (2) If the documents or records are not available during the initial office visit, or in response to the initial IDR, issue a follow-up Form 4564, (IDR). See IRM 4.70.11.8.6 for Preparation and Discussion of the IDR, Content of IDR, IDR Follow-up and Enforcement procedures.

- a. You may mail, EEFax or hand deliver an IDR that is issued after the initial appointment letter.
- b. Request only relevant information you need to resolve the issue(s) or areas you're considering. This decreases the taxpayer's burden.

4.70.13.4  
(11-22-2023)  
**Issue Development**

- (1) Once issues have been identified in any examination, the facts and circumstances must be fully developed to support issue resolution. Once an issue has been identified, resolution should be reached in accordance with the correct interpretation, meaning and application of the law(s).
- (2) As each issue is developed, the taxpayer should be given an opportunity to agree or disagree with the findings. Early and frequent discussions of all relevant facts and pertinent issues are crucial for a complete understanding of the taxpayer's and the government's tax positions and their relative strengths. This can lead to an early resolution of both the issues and the case.
- (3) All identified issues should be resolved during the examination. Attempt to resolve issues as the examination progresses and engage additional specialized resources as necessary.
- (4) In arriving at a conclusion, examiners should:
  - Make an impartial evaluation of all evidence
  - Treat all taxpayers fairly and consistently
  - Apply procedures and tax law fairly and consistently
  - Correct mistakes made by the IRS
  - Refuse to take unfair advantage of taxpayer mistakes or ignorance
- (5) Issue resolution requires the examiner to use the facts and data gathered while developing the issue to determine the appropriate resolution based on function unique steps.
- (6) Collectability should not be considered when determining the continuation of tax-exempt status and appropriate foundation status. However, collectability should be considered for certain issues, such as employment tax, excise tax or income tax. For collectability guidelines on income tax examinations, see IRM 4.10.7.4.6, Collectability.
- (7) An examination report (RAR) is different from a final closing letter that officially closes the examination.
- (8) Preparation of an RAR is a very important part of the examiner's duties. The examination report should be clear, concise, and to the point.
- (9) The RAR is the record of findings and recommendations regarding the investigation of an entity's qualified status and taxpayer's liability for tax. It is the document from which reviewers may determine whether the examiner has properly developed the case and has correctly applied the law, regulations, etc., to the facts in the particular case. Also, it may become the evidence on which the Government relies in a court case. Since the taxpayer ordinarily receives a copy of the report, it serves as a formal presentation to the taxpayer of the findings and recommendations of the examiner.
- (10) There are many variations of reports depending on the type of tax or status change.

- (11) All adjustments must be properly explained and supported by appropriate references to the applicable laws, regulations, court decisions, rulings, etc., on which the examiner based the findings. If you later discover an error in the report or have to provide a subsequent, you may mail a revised report to the taxpayer and representative rather than present the report in a face-to-face meeting.
- (12) You can prepare an initial examination report or a formal RAR.
  - a. In non-declaratory judgment cases, you can opt to prepare an initial RAR if you reasonably expect to secure an agreement before having to issue a 30-day letter and formal RAR. The initial RAR will contain sufficient information to allow the taxpayer and the representative to understand the issues and why you are proposing the adjustment.
  - b. In declaratory judgment issues, prepare a formal RAR.
- (13) Discuss substantive issues with the taxpayer or the representative in a face-to-face meeting. In some circumstances, a telephone conference or call may suffice.
- (14) Fully develop the issues of your examination prior to preparing any RAR. Address your issues in the RAR in the order of significance.
- (15) The RAR should contain all the information necessary to ensure a clear understanding of the issues, the applicable law, and conclusions. The RAR, unlike workpapers, is a legally binding document and when executed, serves as the basis for tax law enforcement action. Prepare the RAR accurately and completely.
- (16) The transmittal letter for the RAR solicits agreement to the proposal. For formal examination reports, this letter is a 30-day letter, which also informs an organization of their right to appeal.

4.70.13.4.1  
(11-22-2023)  
**Factual Development**

- (1) During the examination, the examiner will:
  - a. Identify all relevant facts relating to the issue, including facts supporting the taxpayer's position.
  - b. Present the facts in a clear and effective manner.
  - c. Distinguish between facts and opinions. The facts do not include opinion, personal preferences, inferences, biases or prejudices.
  - d. Document the evidence relied upon to reach the factual conclusion of a given transaction in a clear and understandable manner.
- (2) It is the taxpayer's responsibility to ensure all relevant facts have been presented to support the position taken on the return. It is imperative that the examiner discuss the facts gathered with the taxpayer to understand the taxpayer's position.
- (3) Appeals may return the case to exam if new information is presented during the Appeals process.
- (4) An acknowledgment of the facts must be documented in the case file for all potential unagreed issue(s). Any disputed facts must be noted. The examiner should work collaboratively with the taxpayer to develop and reach a common understanding of the relevant facts. To ensure the effective application of the law, the facts and circumstances should be clear and accepted by both parties.

- (5) Examiners should pursue an examination to a point where a reasonable determination can be made.
- (6) Well-developed facts are a vital part of a quality examination.
- (7) You can develop the facts by:
  - a. Examining the organization's books and records. (IRM 4.70.13.3.4)
  - b. Interviewing the organization's representatives and management. (IRM 4.70.13.3.1)
  - c. Touring the organization's facilities. (IRM 4.70.13.3.3).
  - d. Contacting third parties to corroborate taxpayer statements and get information the taxpayer fails to provide (See IRM 25.27.1, Third Party Contacts IRM 4.70.11.10, Power of Attorney (POA) and Tax Information Authorization (TIA).)
- (8) Use judgment when gathering facts to support a given position. A case file's weight and thickness aren't indicators of a well-developed case. The degree to which you collect and record facts depends on the facts and circumstances of each case.
- (9) Index documents secured during the examination to Form 5773, Workpaper Summary. Include a statement in the work papers showing how the documents support your conclusion.

4.70.13.4.2  
(11-22-2023)

#### **Application of the Law**

- (1) The examiner will:
  1. Apply the law to the facts and circumstances in a consistent, fair and impartial manner.
  2. Conduct open and transparent discussions with the taxpayer to reach an understanding of each other's position when identifying the appropriate laws.
  3. Consider the various legal authorities and other guidance to determine the merits of the issue.
  4. Refer to IRM 4.70.13.5, Researching Federal Tax Law, which provides common research resources.
  5. Consider collaboration with subject matter experts or TEGEDC for assistance.

4.70.13.4.3  
(11-22-2023)

#### **Interpretation of the Law**

- (1) The examiner must:
  1. Apply judgment and experience in weighing the merits of the taxpayer's and the government's tax position, based on the applicable laws, when resolving issues.
  2. Discuss the interpretation of the law, based on the facts and circumstances presented, to reach an understanding of the taxpayer's and government's position.

4.70.13.5  
(11-22-2023)

#### **Researching Federal Tax Law**

- (1) Examiners use various legal authorities and guidance available to them to develop and resolve issues. In general, tax authority can be classified as either primary or secondary authority.
- (2) Primary authority sources are:
  - Statutory

- Administrative
  - Judicial
- a. Statutory authority is the basis for all tax provisions and is summarized in the Internal Revenue Code. Other primary sources of the tax law, administrative and judicial authority, function primarily to interpret and explain the application of the provisions of the IRC and the intent of Congress.
  - b. Administrative sources authority are the IRS pronouncements and consists of the following in the order of authority:
    - Treasury Regulations
    - Revenue Rulings
    - Revenue Procedures
    - Private Letter Rulings (PLR)
    - Technical Advice Memoranda (TAM)/Chief Counsel Advice (CCA)
    - Notice
    - Announcement
  - c. Judicial sources of authority originate in the Courts (Court Decisions and Case Law). Research of case law isn't complete until you review the citator. For example, you must consider if:
    - The case is current.
    - There are other cases on point that should be considered.
    - The ruling is still valid.
    - The revenue procedure has been modified.
- (3) A citator lists the history on cases, revenue rulings, and procedures.
  - (4) Citators are published by commercial publishers of tax services such as, CCH Inc. and Research Institute of America. While formats differ, commercial citators provide basically the same information.
  - (5) Refer to IRM 4.10.7.2.9.7, Citators: Researching Case History, for general information on citators.
  - (6) IRM 4.10.7, Examination of Returns, Issue Resolution, provides a detailed explanation of each of these sources and the format for citing them in reports.
  - (7) Examiners may want to consider secondary authority to interpret the law. It consists of interpretations of primary authority and is an unofficial source of tax information.
    - a. Income tax law is too complex for examiners to immediately perceive its ramifications and provisions in all examinations.
 

**Note:** Secondary authority cannot be cited; but is useful in applying the law. Especially, when there is conflicting primary authority.
    - b. Secondary sources include, but are not limited to:
      - Tax Journals
      - Textbooks
      - Newsletters

- (8) The IRS has contracts with several legal source providers that Examiners can use to conduct research. Refer to the *Reference Net, Legal and Tax Research Service* for a list of current providers and information.
  - Accurint
  - Bloomberg
  - Westlaw
  - Online SEIN System
  - PACER
- (9) EO: You have a wide range of tax literature to use when developing an issue. Monthly publications such as “The Exempt Organization Tax Review”, published by Tax Analysts, provide articles exclusively about tax matters for exempt organizations.
- (10) Make informal, and if needed, written request to obtain TE/GE Counsel assistance when appropriate for:
  - a. Legal interpretations
  - b. Case development of potential unagreed issues

4.70.13.6  
(11-22-2023)

**Using Technical Expert Resources**

- (1) Examiners may request technical assistance when needed. Before requesting assistance, attempt to resolve technical questions via research, analysis, your group manager, and peers. If further assistance is needed, you can receive help from:
  - Knowledge Networks, See IRM 4.70.13.6.1.
  - Specialist Referral System, See IRM 4.70.13.6.2.
  - Mandatory Review, See IRM 4.70.13.6.3.
  - Special Review, See IRM 4.70.13.6.4.
  - ITG Technical Reviewer (ITG Only).
  - TEB Technical Reviewer (TEB Only).
- (2) If there are still unresolved issues after taking these steps, you may also request technical advice on exams from the TE/GE Office of Associate EEE (or FIP Counsel). See IRM 4.70.16, Technical Assistance, Technical Advice Requests and Requests for Relief under IRC 7805(b).
- (3) EP Examiners may be required to use local area actuaries in some instances. See IRM 4.70.13.6.8, Requirement for Actuarial Assistance.
- (4) EP Quality Assurance offers help with questions about determination cases. Send questions to: *\*TE/GE-EP-Determ Exam Requests*.
- (5) You may need help from specialists such as engineers or economists (for example, to confirm the value of property). When requesting help from specialists from other operating divisions, use the SRS at Specialist Referral System. (See IRM 4.70.13.6.2). This includes requests for:
  - Engineers
  - Economists
  - Financial products specialists
  - Computer audit specialists
  - International language specialists
  - Other specialists



4.70.13.6.1  
(11-22-2023)  
**Knowledge Networks**

- (1) You can get help with your technical questions on open examinations by selecting "Ask a Question" on the relevant Knowledge Networks (K-Nets) site on the *Knowledge Management (KM) Portal*. Submitted questions are normally answered within two business days.

4.70.13.6.2  
(11-22-2023)  
**Specialist Referral System**

- (1) You can request assistance with income tax and other special issues from other business units or specialty groups within the IRS through the Specialist Referral System (SRS). See IRM 4.70.12.3.5, Specialist Referral System.

**Note:** The intranet address for the SRS home page is: <https://srs.web.irs.gov>

- a. SRS assistance is comprised of either a consultation or referral.
- b. A consultation aids with any question and will help determine if there is merit to making a referral to another business unit. Often, your issue can be resolved through a consultation. A consultation can also determine if the issue merits a referral to another examination unit.

4.70.13.6.3  
(11-22-2023)  
**Mandatory Review**

- (1) If you need assistance with procedural questions on an open examination, contact the Manager, Mandatory Review. Procedural questions include issues associated with:
  - The IRM
  - Form 2848 and Form 8821
  - Third party contacts
  - Workpaper documentation
  - Statute of limitations
  - Fraud development, including an initial inquiry

4.70.13.6.4  
(11-22-2023)  
**Special Review**

- (1) If you need assistance with procedural questions on an open examination, contact the Manager, Special Review. Procedural questions include issues associated with:
  - TEQMS
  - Workpaper documentation
  - Procedural questions, including but not limited to questions related to third party contacts, disclosure, Form 2848, Form 8821, or potential fraud issues.

4.70.13.6.5  
(11-22-2023)  
**Assistance from ITG Technical**

- (1) Specialists are responsible for processing their cases and getting approval to request technical assistance from ITG Technical. Contact your group manager who will coordinate with ITG Technical Manager.
- (2) Specialist: If your manager agrees that the case is likely to close unagreed or as a claim denial and determines that technical assistance is warranted (with ITG Program Manager approval), prepare and send a memo to the ITG Technical group manager requesting a TLS for technical assistance. Your request should:
  - Identify the taxpayer under examination, and you and your manager's names.
  - Describe the identified area of noncompliance.
  - Include any taxpayer correspondence with a position on the matter.

- (3) ITG Program Manager: Approve the group manager's request for technical assistance, if warranted.
- (4) Technical Group Manager:
  - Notify the group manager and ITG Program Manager of the TLS or Technical reviewer assigned to handle the request.
  - Discuss the assignment's priority with the TLS.
- (5) TLS or Technical reviewer:
  - Review the draft document(s) and prepare a memorandum (the "reviewer's memorandum") to the group manager and specialist with comments on any areas requiring further development or any required revisions.
  - Coordinate with the specialist if more information is needed.
  - Update the Technical Group Manager on case progress.
- (6) Specialist:
  - Provide any other information the TLS or Technical reviewer requires.
  - Incorporate all revisions into the necessary documents.
- (7) All: Share and discuss pertinent case-related communication during the technical review process.
- (8) Group manager: Send the following to the ITG Program Manager after the TLS reviews/revises Form 886-A:
  - Form 5701-B, Notice of Proposed Issue
  - Form 886-A, Explanation of Items
  - Reviewer's memorandum
  - Any other relevant documents
- (9) ITG Program Manager: Discuss any concerns with the TLS before deciding whether to approve the Form 886-A.
- (10) Specialist: After the technical review, prepare the relevant 30-day letter, as follows:
  - Form 1040, ITG cases, use Letter 950 or Letter 950-B.
  - Form 940, Form 941, and Form 945, ITG Employment Tax cases, use Letter 950-C if the case does have IRC Section 7346 Issues.
  - Forms 940, 941, 945 ITG Employment Tax Cases, use Letter 950-D if the case doesn't have IRC section 7346 issues.

4.70.13.6.6  
(11-22-2023)  
**Assistance from TEB  
Technical**

- (1) Examiners get approval to request technical assistance from TEB Technical. They do this by filling out necessary forms and providing information to move a technical assistance request forward.
- (2) Examiner: If your manager agrees that you're likely to close the case unagreed or as a claim denial and determines that technical assistance is warranted (with PM's approval), prepare and send Form 14501, TEB Technical Assistance Request, to TEB Technical manager requesting a TLS for technical assistance. Your request should:
  - Identify the taxpayer and bond issue under examination.
  - Include your name and your manager's name.

- Describe the identified area of noncompliance.
  - Include any taxpayer or issuer correspondence with a position on the matter.
- (3) PM: Approve the group manager's request for technical assistance, if warranted.
- (4) TEB Technical manager:
- Notify the group manager and PM of the assigned TLS.
  - Discuss the assignment's priority with the TLS.
- (5) TLS:
- Review the draft document(s) and prepare a memorandum to the group manager and examiner with comments on any areas requiring further development.
  - Coordinate with the examiner if additional information is needed.
  - Update the TEB Technical manager on case progress.
- (6) Examiner:
- Respond to any TLS request for additional information.
  - Incorporate all revisions into the necessary documents.
- (7) **All:** Share and discuss pertinent case-related communication during the technical review process.

4.70.13.6.7  
(11-22-2023)  
**TEGE Division Counsel  
(TEGEDC)**

- (1) TEGEDC is available for assistance with technical assistance and advice.
- a. Examiners may request assistance from TEGEDC for informal assistance.
  - b. Examiners may also obtain technical advice (tech advice) related to examinations from TEGEDC. See Rev. Proc. 2022-2 (updated annually).
  - c. Initial contact with TEGEDC must be initiated by the exam group manager to the TE/GE Group Counsel manager.
  - d. In general, request assistance from the TEGEDC office covering the taxpayer's state. However, if your case is part of a special project, your request is assigned to a project attorney, regardless of the taxpayer's location.

4.70.13.6.7.1  
(11-22-2023)  
**Assistance from TE/GE  
Division Counsel  
(TEGEDC)**

- (1) Make informal, and if needed, written requests for assistance to TEGEDC for:
- a. Legal interpretations
  - b. Case development for "unagreed" issues
- (2) Obtain approval from your group manager before contacting TEGEDC.
- (3) In general, request assistance from the TEGEDC I office covering the taxpayer's state. However, if your case is part of a special project, your request is assigned to a project attorney, regardless of the taxpayer's location. See the TE/GE Division Counsel *Geographic Coverage List* for the office covering the taxpayer's location and the TE/GE Division *Counsel Office Listing* for Counsel employees' contact information.

- (4) Generally, an opinion from TEGEDC is confined to the specific facts and circumstances of a case. You may not apply the opinion to other cases without contacting Counsel.
- (5) Whenever you want to pursue the six-year statute of limitations (SOL) for a case, you must obtain written approval from TEGEDC. Keep a copy of the written response in the case file.
- (6) When TEGEDC responds, the group manager sends a sanitized copy to the Manager, Special Review, who determines if TEGEDC's guidance impacts other cases.

**Note:** Remove the taxpayer's name and TIN to create a sanitized copy.

- (7) If the Manager, Special Review determines that TEGEDC's guidance impacts other cases, he/she will prepare a memo describing the guidance and distribute to EO/GE and/or EP Examination examiners and their managers.

**Note:** TEGEDC can help Special Review to draft the memo.

4.70.13.6.7.2  
(11-22-2023)  
**Technical Advice  
Memorandum (TAM)  
Procedures**

- (1) A TAM is defined as written advice prepared by TEGEDC as to:
  - a. The interpretation and proper application of tax law, tax treaties, regulations, revenue rulings, notices, or other published precedents.
  - b. A specific set of facts connected to the examination of a taxpayer's return, consideration of a taxpayer's claim for refund or credit.
  - c. Any other matter under TE/GE Examinations' jurisdiction.
- (2) Request a TAM when the application of the law to the facts involved in your exam is unclear. The question must be on "the interpretation and proper application of tax laws, tax treaties, regulations, revenue rulings, notices, or other precedents to a specific set of facts that concerns the treatment of an item in a period under examination". See Rev. Proc. 2021-2.
- (3) A taxpayer may request technical advice during an examination for an issue under Policy Statement 4-82.
- (4) Contact the Area Counsel office responsible for the state in which the taxpayer is located before you request a TAM. See IRM 4.70.13.6.7.1, Assistance from TE/GE Division Counsel (TEGEDC).

**Note:** You must receive TE/GE Division's support before proceeding with a TAM. TE/GE Division Counsel will help you with the TAM request submission.

- (5) Prepare Form 4463, Request for Technical Advice Memorandum.
- (6) Submit all TAM requests to TE/GE Division Counsel.

**Note:** TE/GE Functional Unit instructions can be found in IRM 4.70.16, TE/GE Technical Assistance, Technical Advice Requests and Requests for Relief under IRC section 7805(b).

4.70.13.6.8  
(11-22-2023)

**Requirement for  
Actuarial Assistance for  
EP Examiners**

- (1) EP examiners must get input from their local examination actuary when examining:
  - a. a defined benefit plan, including cash balance and other hybrid plans; and
  - b. a defined contribution plan that uses cross-testing or average benefit testing in order to be in compliance within operation.
- (2) The group manager or examiner will complete the “Checklist for Actuary” (see *Employee Plans Examinations Exhibits* and any other checklists associated with Compliance Strategy cases, if applicable, and send to their assigned actuary). The examiner and manager will document all discussions in the CCR or workpaper or by uploading all relevant internal correspondence (such as, TEAMS chat, email, fax, etc.) to the RCCMS case file.
- (3) The examinations actuary will provide a document stating the results of their review of the examination issues. This documentation must be uploaded into RCCMS.
- (4) Do not close cases before receiving and uploading the response document from the actuary unless you do not receive a timely response from the actuary within 15 business days. The manager may grant an extension of the 15-day period in appropriate situations. The actuary should request the extension from the manager before the 15-day period ends.
- (5) The final decision on whether to follow the actuaries recommendation is up to the manager and examiner. The examiner and manager must clearly document the decision in the case file.

4.70.13.7  
(11-22-2023)

**Case  
Monitoring/Management**

- (1) Effective case management is essential for a quality exam and directly impacts the IRS’s balanced measures – business results, customer satisfaction, and employee satisfaction. A well-managed inventory improves quality and cycle time, increases customer satisfaction with the examination process, and enhances employee job satisfaction. See Exhibit at IRM 4.2.8-1, National Standard Time Frames for Case Action.
- (2) Continue examination planning and monitoring throughout the exam. As the exam progresses the actions and examination steps may change.
- (3) While appropriate inventory management methods for a particular case may vary, work all cases promptly and according to organizational priorities.
- (4) Examiners must:
  - a. Consider organizational goals when prioritizing work.
  - b. Have a strategy for working cases that includes timely follow-up actions; for example, put reminders on your calendar to follow-up.
  - c. Review each case for necessary action at least every 45 days (30 days for correspondence examinations), absent unusual circumstances (for example, cases in suspense).
  - d. Plan work at least a week in advance. Prioritize which cases will be worked each day.
  - e. Complete all actions possible on a case before moving on to the next case/activity.

- (5) Plan your work to promptly communicate with taxpayers, including responding to telephone calls and letters. Allow time to complete administrative processes.
- (6) Notify your managers when you need cases. Ask for the number of cases that you can start within 10 business days.
- (7) Tell your manager about unusual or problem situations so she or he is involved in the issues.
- (8) Be professional: set the tone for the exam. Timeliness is one measure of a quality examination. The IRS and taxpayer depend on your professional judgement to ensure that exams are processed accurately and efficiently. Every case has its own set of circumstances. However, the examiner should generally apply the following guidelines:
  - a. Establish exam expectations with the first taxpayer contact, including ensuring the taxpayer understands the exam process.
  - b. Be prompt and attentive to the taxpayer throughout the exam to reinforce the established expectations.
  - c. Ensure the taxpayer understands what information we are requesting during the exam and the date they must provide it. Follow-up immediately when deadlines are not met.
  - d. Review requested documents as soon as possible after receipt and inform the taxpayer of any delays.
  - e. Work a case until no additional actions can be taken, including requests for additional documents. Document the reasons for inactivity of more than 30 days on the case chronology record.
  - f. Promptly discuss any identified noncompliance with taxpayers, request any necessary clarification or facts or additional information, and consider any actions that might resolve the case expeditiously.
  - g. Close resolved exams immediately.
  - h. Consider using the Power of Attorney bypass process under IRM 4.70.12.7.4, POA Bypass if representatives attempt to unnecessarily delay an examination.

4.70.13.8  
(11-22-2023)  
**Continuous Risk  
Analysis**

- (1) Risk Analysis is the process of comparing the potential benefits derived from examining a return or issue to the resources required to do the examination. Goals of assessing risk are to:
  - Improve the planning session
  - Reduce the examination cycle time
  - Efficient use of compliance division resources
  - Reduce taxpayer burden
- (2) Examiners and managers must use their professional judgment to determine whether:
  - Issue will continue to be examined
  - Issue should not be pursued further
  - Other issues should be considered
- (3) Materiality and compliance considerations should be evaluated throughout the examination.

**Example:** As response to an Information Document Request or a summons is received.

- (4) At a minimum, the materiality should be assessed during these parts of your examination:
  - a. at the inception of the examination during the pre-contact analysis
  - b. at the mid-point (50 percent rule)
  - c. when a significant event occurs
- (5) Materiality is not an absolute concept for determining the significance of an amount, transaction, or discrepancy.
- (6) The definition of “significant” or “material” depends on your evaluation of a return as a whole and the particular items that make up the return. However, you must consider the following factors when determining whether an item is significant:
  - Adequacy of the books and records and internal controls
  - Beneficial effect of the way an item is reported or not reported
  - Comparative and/or absolute size of the item
  - Complexity of the law and the amount of resources required to pursue the issue
  - Evidence of intent to mislead
  - Financial condition of the entity - collectability and going concern
  - Inherent character of the item
  - Permanency of the potential adjustment or issue
  - Promotion of future voluntary compliance
  - Recurring nature of the issue and potential impact on future years
  - Other- Not material but failure to examine would be contrary to public or service policy (for example, discrimination)
  - Fraud
- (7) Any modification to the exam plan (i.e., scope or issue) need to be discussed and approved by the group manager. The group manager has the authority to pursue or to not pursue an issue.
  - a. Ensure that all discussions with the group manager are recorded in the CCR.
  - b. Ensure that all issues are listed on the issue grid in the RCCMS record and that the group manager has approved the issue. The issue grid documents the scope of the examination.
- (8) As soon as a determination is made to change the scope of the exam, the examiner will promptly inform the taxpayer whether an issue is being added, continued, expanded, narrowed, or dropped.

4.70.13.9  
(11-22-2023)  
**Delinquent, Amended  
and Substitute for  
Returns**

- (1) A delinquent return is a return that was not filed before the due date, including extensions, which the taxpayer voluntarily files with the Service.
- (2) A substitute for return (SFR) is prepared by the examiner and is used to establish an account for a taxpayer who refuses to file, or is unable to file, a required return. Substitute for return procedures are applicable when the return due date and extended due date has passed and all efforts have been exhausted to secure a return from the taxpayer.
- (3) An Amended return is a return filed which changes information submitted on the original return.



- (4) When you discover that a taxpayer hasn't filed required returns:
  - a. Determine the periods for which the taxpayer was required to file returns.
  - b. Find out the reasons the taxpayer didn't file the required returns.
  - c. Determine whether any indications of fraud exist. See IRM 25.1.2.3, Indicators of Fraud.
  - d. Secure the non-filed return if the taxpayer is under exam.

4.70.13.9.1  
(11-22-2023)  
**Identity Filing  
Requirements**

- (1) It is important to determine what existing and potential filing requirements are present. Examiners may complete this task at different times in the examination process, starting in the pre-exam phase with review of required filing checks, see IRM 4.70.12.3.7 and sometimes later when it is found a filing requirement occurs from a specific taxable or reportable event.
- (2) IDRS research should be used to determine what filing requirements are already identified. See IRM 4.70.12.3.7, Required Filing Checks, and IRM 4.70.12.3.9, IDRS Review, for tips on how to identify command codes that provide research applicable to your taxpayer.
- (3) Throughout your examination, identify potential tax liabilities applicable to your taxpayer or related taxpayers.
- (4) **EO:** If an organization isn't required to file certain returns for future periods you must both update the filing requirement in the **EOBMF** and prevent the generation of automated notices:
  1. Prepare Form 2363-A to update a filing requirement to the **EOBMF**.
  2. Prepare Form 4844. In the remarks write, Input TC 590 CC 75 to prevent automated notices.
  3. Send Form 4844 and Form 2363-A to the FAST by fax, email or ground mail.
  4. Research IDRS two weeks later to verify a new filing requirement. The FAST will also send you a notification email.

4.70.13.9.1.1  
(11-22-2023)  
**EO Non Return Units**

- (1) When examining taxpayers, an examination record (or module) is required for control on Audit Information Management System (AIMS) and Reporting Compliance Case Management (RCCMS). The examination record identifies a
  - Specific return.
  - Tax period.
  - Taxpayer.

**Note:** This record is commonly referred to as a "return module".
- (2) However, Form 990 (MFT 67) has unique characteristics, which pose procedural challenges when a MFT 67 examination control module has no filing requirement or a Form 990-N is filed (not a return). So, the term "return module" can be somewhat misleading.
- (3) Refer MFT 67 examination records as NRU when:
  - No Form 990 return is required and no Form 990 or Form 990-EZ is filed.
  - No Form 990 return is due (including extensions), and no Form 990 or 990-EZ is filed.
  - Form 990-N is filed instead, properly, or improperly.

- (4) An MFT 67 NRU module is a module of:
  - Any posted Form 990-N, assuming no actual MFT 67 return is subsequently filed.
  - A MFT 67 AIMS record of a non-filer organization required to file Form 990-N.
  - A MFT 67 AIMS record of a non-filer church (i.e., a church that hasn't filed a Form 990 series return).
  - A MFT 67 AIMS record where the return for the tax year isn't yet due.
- (5) An MFT 67 NRU module is not:
  - The AIMS record of a church that actually filed a Form 990.
  - The AIMS record of a non-filer required to file Form 990.
- (6) An MFT 67 module loses its designation as a NRU module, becoming a "return module" if the examiner:
  - a. Receives a filed Form 990 or 990-EZ, whether or not the return was required.
  - b. Prepares a Substitute for Return (SFR) Form 990 (signifying a requirement to file Form 990).
- (7) Every NRU AIMS record under examination is physically represented in the case file, by a dummy return.
- (8) A "dummy return" is a skeletal first page of Form 990 serving as a placeholder in the MFT 67 NRU case file. Allowable entries on a dummy return include the organization's:
  - Name
  - Address
  - TIN
  - Tax period
  - The annotation, on the top margin, in red, "DUMMY RETURN" or "DUMMY RETURN- CHURCH" or "DUMMY RETURN-NON-FILER UNDER \$50,000".
- (9) Follow these AIMS establishment and case file instructions for various types of NRUs. SFRs are also included in this table for comparison purposes:

If	And...	Then Establish Module on AIMS:	In lieu of "return", in the case file, use:
Form 990-N was filed	---	MF (a NRU Module)	Graphic Print of 990-N Postcard, available via Employee User Portal (EUP) database or EO Select Check print for Filed Form 990-N.
No Form 990, 990-EZ or 990-N was filed	Organization is required to file Form 990-N	NMF (a NRU Module)	Dummy Form 990. Insert <b>-N</b> after "990" in bold print.
No Form 990, 990-EZ or 990-N was filed	Organization is not required to file either Form 990 or 990-N (e.g., church), or the return or notice isn't due (the due date or extended due date hasn't passed)	NMF (a NRU Module)	Dummy Form 990
No Form 990, 990-EZ, or 990-N was filed	Organization is required to file Form 990 and organization refuses to file the Form 990	MF	Substitute for Return
No Form 990, 990-EZ or 990-N was filed	Organization is required to file Form 990 and Delinquent Form 990 is secured	MF	Copy of Delinquent Return

- (10) If an organization voluntarily files a Form 990, 990-EZ or 990-N for the examination years after the group shipped the NRU case for closure, the closing

function (or review function) generally doesn't send the case back to the group for an AIMS MF establishment unless the closing function (or review function) either:

- a. Rejects the case for other reasons or
- b. Determines with reasonable certainty, the organization was indeed required to file Form 990 or 990-EZ for the examination years in the first place (requiring delinquent return procedure).

(11) If you establish an NRU examination record (MF or NMF), but you didn't conduct the examination, follow the instructions in IRM 4.70.14.4.9, Non-Examined Closures. Delete MF and NMF accounts by preparing an electronic Form 10904, Request for Record Deletion from AIMS package:

- a. Use Disposal Code (DC) 33 (901), Error Accounts with No Returns.
- b. Complete first page ONLY, signed by you and your GM.

**Note:** Area Manager must sign DC 33 requests.

- c. AMDISA print for module being deleted.
- d. AMDISA print for corresponding module established on MF.
- e. TXMODA.
- f. Supporting documentation:

1. Upload the Form 10904 package into RCCMS.
2. Close to your TE/GE Closing Unit in status code 56.
3. The Closing Unit accepts the case using current practice.

4.70.13.9.2  
(11-22-2023)

## Determine Delinquency

(1) A delinquent return is a required return that was not filed by the due date, including extensions.

(2) Before soliciting what is believed to be a delinquent return or preparing SFRs:

- Identify the filing requirement as stated in IRM 4.70.13.9.1, Identify Filing Requirements.
- Obtain IDRS (BMFOLI, IMFOLI, EMFOLI) prints to identify filed and non-filed returns.
- See IRM 4.70.12.3.9, IDRS Review.

(3) Tax modules not displayed in IDRS are either:

- Not yet due.
- For returns not required to be filed.
- Stored on a retention register, for example, filed or full paid modules more than 7 years old.

**Note:** TDIs will reflect status codes 01 through 04.

(4) Obtain transcripts on IDRS for each tax module relevant to the examination. Transcripts can't be more than 30 days old.

(5) EO: For NMF returns, obtain NMF transcripts as follows:

- a. Send an encrypted email to the Submission Processing Center Non-Master File (NMF) Team in Kansas City at *\*W&I KCSPC Non-Master File Team*.

- b. Subject line: NMF Transcript Request
- c. The body of the email should contain: "Please provide a NMF transcript for XYZ Corporation; EIN 12-3456789; MFT 66; Tax period 201111."
- d. Call (816) 499-5445 to follow-up on your request.

(6) A transcript also informs examiners whether:

- A TDI has been initiated.
- A TDI has been resolved.
- A return has been filed.
- A SFR has posted TC 150.

(7) If a transcript reflects one of the TC's below, there is no delinquency for that return:

- TC 150
- TC 590
- TC 591
- TC 593.
- TC 594.
- TC 596.
- TC 597.
- TC 599.

**Note: EO:** When TC 590, 591 and 593 are posted for a Form 990, solicit the return unless a TC 590 CC 14 is present in the transcript.

(8) Make a determination of a filing requirement after you have considered any combination of the following:

- The taxpayer's stated reasons for not filing.
- IDRS research.
- Interviews in general.
- Facts developed from examining books and records.
- Touring facilities.
- Public records and websites.
- Non-responses to your inquiries.

(9) A delinquency determination itself generally isn't subject to appeal. The resulting penalties or SFR adjustment deriving from a taxpayer's disagreement over a delinquency determination can be appealed. Some penalties can only be appealed after assessment of the penalty. See IRM 20.1.1.4.

(10) **EO:** Exhibit 4.70.13-1, EO Delinquent Return Checksheet.

4.70.13.9.3  
(11-22-2023)

**Determining to Solicit  
Delinquent Returns or  
Enforce Substitute for  
Returns**

(1) Before soliciting delinquent returns or enforcing SFRs, examiners should consider:

- a. The enforcement period in IRM 4.70.13.9.3.1, Enforcement Period for Delinquent Returns or Enforcing SFRs.
- b. When not to Solicit Delinquent Returns or Enforce SFRs as described in IRM 4.70.13.9.3.2.

(2) Examiners should also obtain managerial approval as described in IRM 4.70.13.9.3.3.

4.70.13.9.3.1

(11-22-2023)

**Enforcement Period for Delinquent Returns or Enforcing SFRs**

- (1) Retroactive solicitation or enforcement should not exceed six years. See IRM 1.2.1.6.18, Policy Statement P-5-133.
- (2) Apply shorter or longer periods as needed in the best interest of tax administration subject to managerial approval, see IRM 4.70.13.9.3.3, Manager Approval.
- (3) When determining the extent of soliciting or enforcing returns, consider:
  - Statutes for certain related returns to a primary return of record.
  - The taxpayer's prior history of noncompliance.
  - The extent of the delinquency.
  - The effect upon voluntary compliance.
  - Whether the delinquency involves diverted funds.
  - Whether the circumstances are peculiar to a specific taxpayer.
  - The estimated tax in relation to the time and effort to enforce it.
- (4) **EP** - If the examination involves a plan or trust that has been granted a conditional waiver of the minimum funding deficiency, retroactive enforcement may exceed six years.

4.70.13.9.3.2

(11-22-2023)

**When Not to Solicit Delinquent Returns**

- (1) Don't solicit a return under the following conditions:
  - a. Fraud is indicated. Consult with the TE/GE Fraud Specialist. See IRM 25.1, Fraud Handbook.
  - b. The taxpayer is exempt from filing a return by law.
  - c. The return was filed under another EIN.
  - d. In the case of converted returns: The underlying revocation or adverse status change is neither agreed nor final.
  - e. In the case of primary returns for EO, the organization is a subordinate in a group ruling and is included on a group return.

If	Then
If an organization isn't liable for filing Form 990 because it filed a group return with a parent organization:	<ol style="list-style-type: none"> <li>1. Prepare Form 4844 to satisfy the module for the tax period.</li> <li>2. In the remarks, write: "Input TC 590 CC 14".</li> <li>3. Send the completed Form 4844 to the FAST by fax, secure e-mail, or mail.</li> </ol>
Additional liabilities are found.	Pursue enforcement.

**Note:** You may solicit other delinquent returns from subordinate organizations, such as Form 990-T.

- (2) Make the following considerations for taxpayers in bankruptcy:
  - a. If a taxpayer has filed for bankruptcy protection, don't solicit payments. Bankruptcy protection prevents the collection of tax.
  - b. Immediately contact an Examination Bankruptcy Coordinator (SB/SE). The coordinator determines if the bankruptcy is still pending and provides

you with further instructions. For a list of coordinators, see <http://mysbse.web.irs.gov/exam/tip/bankruptcy/contacts/12268.aspx>.

- c. Indications of a bankruptcy include:
  - -V Freeze on TXMOD.
  - -U Freeze on AIMS for bankruptcy petitions filed prior to October 22, 1994.
  - -X Freeze on AIMS for bankruptcy petitions filed on or after October 22, 1994.
  - TC 520.
  - The taxpayer, through an officer, trustee, director, or representative indicates verbally or in writing that it is in bankruptcy.
- d. Bankruptcy also prevents the assessment of tax. However, bankruptcy doesn't prevent the issuance of an examination report, a FADL or SNOD.
  - An -X Freeze will prevent an examination tax assessment (TC 300), unless you use an agreed disposal code.
  - A -U Freeze will prevent an examination tax assessment (TC 300).
  - If you examine a taxpayer under bankruptcy protection, see IRM 4.19.13.19, IRM 4.27.1, and IRM 4.27.2.
- e. Consult with a bankruptcy coordinator before:
  - Soliciting delinquent or converted returns.
  - Issuing a report.
  - Imposing penalties.

4.70.13.9.3.3  
(11-22-2023)  
**Manager Approval**

- (1) The group manager approves the number of periods for which delinquent returns are solicited. Document workpapers and CCR to:
  - Outline the facts of the case.
  - Detail the reasons for recommending a longer or shorter number of years than six years.
- (2) Managerial approval is also required for most penalties IRC 6751(b)(1).

4.70.13.9.4  
(11-22-2023)  
**Soliciting Delinquent Returns**

- (1) When you determine that a return should have been filed but was not, after considering fraud and enforcement periods, solicit the return from the applicable taxpayer using the usual taxpayer contact procedures.
 

**Note:** EP follow steps in IRM 4.70.13.9.4.1, to solicit Form 5500 series returns to be filed on the *Department of Labor EFAST2 site*.

**Note:** EO follow steps in IRM 4.70.13.9.4.2 to address Organizations with specific circumstances.
- (2) In the solicitation, ask for an explanation why the return wasn't filed. Be sure to document your workpapers and CCR with the steps taken to solicit the return as well as all taxpayer explanations.
- (3) If the taxpayer:



- a. Files a delinquent return with you, see IRM 4.70.13.9.5, Delinquent Return Procedures.
- b. Files an amended return with you, see IRM 4.70.13.9.6, Amended Return Procedures.
- c. Can't or refuses to file a delinquent return, see IRM 4.70.13.9.7, Substitute for Return Procedures.

(4) If the delinquent return is:

- a. Under the jurisdiction of another BOD or TE/GE function, see IRM 4.70.13.9.5.10, Delinquent Return Secured for Other Operating Division Jurisdiction.
- b. An employment tax return, see IRM 4.70.13.9.5.5, Processing Delinquent Employment Tax Returns.
- c. A payee-type information return, such as Form W-2, see IRM 4.70.13.9.5.6, Processing Delinquent Information Returns (Other than Form 5500 Series returns).

**Note:** A reasonable cause determination doesn't relieve a taxpayer from filing a required return.

4.70.13.9.4.1  
(11-22-2023)  
**EP Form 5500  
Considerations**

- (1) When you determine that a Form 5500 return should have been filed but was not filed or that a filed return should be amended, ask the taxpayer to file the delinquent or amended Form 5500 through the EFAST2 System using an EFAST2 approved third party software or IFILE on the Department of Labor (DOL) web site [www.efast.dol.gov](http://www.efast.dol.gov). Taxpayers can seek filing support by emailing DOL at [support@efast.dol.gov](mailto:support@efast.dol.gov)
- (2) Using Form 3210, mail all amended and secured Form 5500-EZ returns picked up during an examination to Classification for posting to the EPMF.

**Note:** Form 5500-EZ returns are no longer processed by DOL.

- (3) IRC 6652(e) penalties will automatically be assessed on late filed returns. If there is reasonable cause not to assess penalties, complete Form 3177 and submit the form along with the return to Classification.

**Note:** E-mail Form 3177 to Classification two weeks prior to the time the delinquent Form 5500 series return is filed to give enough time for processing so that penalties will not be assessed when the Form 5500 series return is filed. Classification will notify you once the Form 3177 has been processed and the TC 971 (with action code 632) has posted so that the Form 5500 series return can be submitted for processing and the penalties will not be assessed.

**Note:** If penalties are improperly assessed, see IRM 20.1.2.3.7.5.1.3, Abatement of the FTF Penalty.

**Note:** Schedule SSA, Separated Vested Participant Information, is no longer part of the Form 5500 series return. Participant information is now reported to Social Security on Form 8955-SSA

- (4) If during the examination, you get a Form 8955-SSA, forward it with a Form 3210 to the address noted in the instructions to Form 8955-SSA.

4.70.13.9.4.2  
(11-22-2023)

**EO Function Specific  
Considerations**

- (1) EO examiners should make further considerations for taxpayers with these specific circumstances:
  - a. **Out of Business, Terminated or Dissolved.** If an organization is out of business, ceased to operate, terminated, or filed for dissolution, obtain all of the following:
    - A final return. Ensure the check box for final return is marked.
    - A written statement of disposition of assets.
    - A dissolution document.

**Note:** Don't terminate the organization's exempt status if either one of these three evidentiary items is missing.
- (2) **Inactive Organizations.** Inactive organizations are organizations that continue to exist, but are not operational.
  - a. Refer to IRM 4.70.14.2.1.3.1.25, Inactive Organizations, for guidance on reports, letters and closure instructions. See also IRM Exhibit 4.70.14-17, EO Unable-to-Locate Scenario Guidance Table.
  - b. An EO that fails to file a required Form 990 series return or notice for three consecutive tax years, will be auto-revoked.
  - c. If an inactive organization contends it is exempt from filing Form 990 or an e-Postcard:
    - Review the facts and the taxpayer's explanations and make a determination.
    - If an organization is required to file a return, solicit the return after considering fraud.
    - You may issue Letter 5325, 90-Day Demand Letter, for Form 990 after two or more attempts to secure a Form 990.
  - d. If an organization was inactive during the period under examination, and it has an open TDI for any taxable return (other than Form 990-PF), close the TDI if no taxable return is required as follows:
    1. Prepare Form 4844. In the remarks, write:
      - "Input TC 590 cc 50" for closing a TDI only for the period under examination (tax-exempt status continues).
      - "Input TC 591 cc 50" for closing a TDI for the period under examination and all succeeding tax periods - no longer liable for the tax (tax-exempt status continues).
      - "Input TC 598 cc 057" for closing a TDI for a return of an organization whose tax-exempt status has been or will be revoked.
    2. Send Form 4844 to the FAST by FAX, secure e-mail, or mail.
    3. If records were inspected, close the tax return examination with DC 02 (107), No Change, unless a higher priority disposal code applies.
    4. If no records were inspected, close the tax return with DC 32 (908), Survey After Assignment.

**Note:** Identify an open TDI by researching Command Code TXMOD. Go to the TDI Module Indicator field for BMF accounts and for IMF

accounts. The opened and closed TDI field indicators are provided in Section 11 of Document 6209.

- e. Inform the organization on the consequences of not filing Form 990 (or Form 990-N if eligible). Answers to frequently asked questions are found at *Automatic Exemption Revocation for Non Filing: Frequently Asked Questions 2* / Internal Revenue Service ([irs.gov](http://irs.gov)).
- (3) Subordinate Organizations Included in Group Return:
- a. If an organization isn't liable for filing Form 990 because it filed a group return with a parent organization:
    1. Prepare Form 4844 to satisfy the module for the tax period.
    2. In the remarks write, "Input TC 590 CC 14."
    3. Send the completed Form 4844 to the FAST by FAX, secure e-mail, or mail.
  - b. You may solicit other delinquent returns from subordinate organizations, such as Form 990-T.
  - c. Pursue enforcement if additional liabilities are found.
- (4) Bankruptcy:
- a. If a taxpayer has filed for bankruptcy protection, don't solicit payments. Bankruptcy protection prevents the collection of tax.
  - b. Immediately contact an Examination Bankruptcy Coordinator (SB/SE). The coordinator determines if the bankruptcy is still pending and provides you with further instructions. For a list of coordinators, see <http://mysbse.web.irs.gov/exam/tip/bankruptcy/contacts/12268.aspx>.
  - c. Indications of a bankruptcy include:
    - -V Freeze on TXMOD
    - -U Freeze on AIMS for bankruptcy petitions filed prior to October 22, 1994
    - -X Freeze on AIMS for bankruptcy petitions filed on or after October 22, 1994
    - TC 520
    - The organization through an officer, trustee, director, or representative indicates verbally or in writing that it is in bankruptcy.
- (5) Bankruptcy also prevents the assessment of tax. However, bankruptcy doesn't prevent the issuance of an examination report, a FADL or SNOD.
- An -X Freeze will prevent an examination tax assessment (TC 300) unless you use an agreed disposal code.
  - A -U Freeze will prevent an examination tax assessment (TC 300).
  - If you examine a taxpayer under bankruptcy protection, see IRM 4.19.13.19, RGS Case File Assembly; IRM 4.27.1, Bankruptcy, Examiner Responsibilities and Procedures.
- (6) Consult with a bankruptcy coordinator before:
- Soliciting delinquent or converted returns
  - Issuing a report

- Imposing penalties

4.70.13.9.5  
(11-22-2023)

**Delinquent Return  
Procedures (Processing  
Delinquent Returns  
Other than Employment  
Tax Returns)**

- (1) Upon receipt of a delinquent return, the examiner: May secure a delinquent (or converted return by fax. Refer to IRM 3.12.279.32, Facsimile (FAX) Guidelines.

**Note:** The IRS only accepts a faxed original return in order to verify the taxpayer's claim that they filed the original return. See IRM 4.19.4.3.23, Faxed Signatures - Replies.

**Caution:** Taxpayers may never file an original return by fax.

- (2) Ensure that the following items are on the return:

Return Field	Entry
Name of the Taxpayer	<p>Type or print legibly, with no strikeouts, the taxpayer's name.</p> <p>When possible, it must duplicate the name used on a previously filed return with the same Taxpayer Identification Number (TIN). You can check this by searching INOLES in IDRS. The name used with a recently acquired EIN should duplicate the taxpayer's SS-4, Application for EIN.</p> <p>If the name is not correct, prepare or secure a corrected return and solicit the taxpayer's signature on the corrected delinquent return. Mark an "X" across the face of the incorrect return. Write the word "Invalidated", sign and date below the notation.</p>
Address of the taxpayer	Verify with the taxpayer that the address shown on the return is the taxpayer's current address.
Taxpayer Identification Number	Verify the TIN shown on the return is correct by researching AIMS, EPMF or BMF. If the taxpayer does not have an TIN, follow IRM 4.70.13.9.5.5.1, Employer Identification Number Issues.

Required forms and schedules	Verify that all forms and schedules are present, and the computations are correct. TE/GE is responsible for the accuracy of the return and no further verification is done.
Signature and Date	The taxpayer's original signature and the date the return was signed.
Taxable Period	Use the current or appropriate year's tax form depending on local Campus Center preference.

- (3) Write in red on the top margin of the original return, "DELINQUENT RETURN SECURED BY TE/GE".

**Reminder:** Room in the upper right corner must be left for the DLN to be entered by the Campus Center.

- (4) Date stamp the delinquent returns when they are accepted. If a date stamp is not available, the examiner should annotate in the middle of the return over the wording, but not over the numbers, "Received", the date received and the examiner's name and title. The examiner should keep a copy of the tax return for the examination file.
- (5) Write in red on the bottom margin of the original delinquent return, "TC 599-CC 096, TC 599-CC 94" (EO, FSL, ITG, TEB or EP Form 5330) or "TC 599-CC 97" (EP Form 5500).
- (6) Attach Form 3198-A, TE/GE Special Handling Notice, to each return being submitted to indicate if the delinquency penalty should or should not be assessed. Also attach Form 13133, Expedite Processing Cycle, to the front of each return being submitted. Check the box for "DELINQUENT RETURN". It is essential that a separate Form 13133 be prepared for each tax period.

**Note: EP Forms 5500 series returns** - Prepare Form 3198-A, TE/GE Special Handling Notice, indicating Form 5500 series return is to be processed by Classification. Using Form 3210, mail the return to Classification.

- (7) If not on AIMS, prepare Form 5597, TE/GE IMF/BMF/EPMF Request.

FOR	INSERT	ACTION
EP Form 5500	Item 8	Place a "1" or "3" since a return is not requested.
EP Form 5500	Item 9	Enter the Push Code 080 for delinquent returns.

EP Form 5500	Item 22, Reason for Request,	Write "DELINQUENT RETURN SECURED BY TE/GE".
EO/GE	Item 8	Place a "1" or "3" since a return is not requested.
EO/GE	Item 11	Enter the Push Code 020 for delinquent returns.
EO/GE	Item 22, Reason for Request	Write "DELINQUENT RETURN SECURED BY TE/GE".

4.70.13.9.5.1  
(11-22-2023)

**EP Processing  
Delinquent Forms 5500  
Series Returns**

- (1) If you get a hard copy delinquent Form 5500 series return, process the return as follows, verify:
  - a. The plan sponsor's name, address and EIN are properly completed.
  - b. The plan name, plan number and plan year are properly listed.
  - c. All required schedules are attached.
  - d. The return is signed (original signature) and dated by the taxpayer.
  - e. The return is properly stamped with the date received.
  - f. You write in red on the top margin of the original return, "Delinquent return secured by TE/GE Employee Plans".
  - g. You write in red on the bottom margin of the secured return "TC 599 Cc".
  - h. You prepare Form 3198-A, TE/GE Special Handling Notice, indicating the return is to be processed by Classification.
  - i. Using Form 3210, mail the return to Classification.
- (2) If you get a hard copy **amended** Form 5500 series return, process the return following IRM 4.70.13.9.6.2, EP Processing amended Form 5500 series returns.

4.70.13.9.5.2  
(11-22-2023)

**EP Processing  
Delinquent Forms 5330  
and 990-T**

- (1) Date stamp all delinquent Forms 5330 or 990-T with the IRS received date as soon as possible after receipt from the taxpayer.
- (2) Verify that the Form 5330 or 990-T submitted is the most current version of the form.
- (3) Verify the accuracy of the entire Form, paying specific attention to the following items:
  - a. That the filer's name is correct and that it matches the name on INOLES for the applicable EIN/SSN. Note: If the filer's name does not match what is on INOLES, the return will reject at the campus.
  - b. The correct amount of tax is reported on all applicable lines of the return and that supporting schedules are completed.  
  
**Example:** An entry on line 8a on page one of Form 5330 also requires a corresponding entry on Schedule D lines 1 and 2.
  - c. The correct tax year is listed.

**Note:** Form 990-T trust year MUST match the plan year. Unlike Form 1041, when filing a Form 990-T, trust years do not revert to a calendar year when the plan year is not on a calendar year.

- d. The correct TIN is listed for the filer.

**Note:** For Form 5330: Only one TIN (either an EIN or SSN) should be listed in Item B on page one of the return.

**Note:** For Form 990-T: A Form 990-T sent to Ogden with an EIN that is used for any other purpose than for the filing of Form 990-T.

- e. The correct plan number is listed.
- f. The return is signed by the taxpayer.

**Note:** Form 990-T, the signer is the Trustee.

- (4) Solicited delinquent returns may be received by mail, fax or EEFax.
- (5) If a SFR package was previously sent to the campus in accordance with IRM 4.70.14.3.4.2.3.2, Substitute For Return Package, and the taxpayer is now filing a delinquent return with the examiner, process the secured return as an amended return, See IRM 4.70.14.3.1.2.4.5.7, Amended 5330 and 990-T Returns.
  - a. Check block "H" at the top of the first page of Form 5330 or 990-T indicating it's an amended return.
  - b. Write "AMENDED RETURN SECURED BY TE/GE: EMPLOYEE PLANS" on the top of Form 5330 or 990-T.
- (6) If payment is received, process checks in accordance with Government Accountability Office (GAO) recommendations following IRM 4.70.13.9.10, Payment Processing.
- (7) If no payment is received, send the Form package as soon as administratively possible (preferably within three business days) to the Ogden Submission Processing Campus.
- (8) Write in bold red letters on the top margin of the original return: "DELINQUENT RETURN SECURED BY TE/GE EMPLOYEE PLANS".

**Reminder:** Leave room in the upper right corner for the DLN to be entered by the Service Campus.

- (9) The prepared package forwarded to the campus will contain the following:
  - a. Form 3210

1.	Address Form 3210 to the P&A Analyst. See IRM 4.70.XX - Exhibit 13 for the P&A's Analyst's contact information
2.	List the forms secured, the taxpayer's name and SSN, and the tax years being sent;
3.	If payment is received also list the check number and the amount of the check



4.	Include, both your telephone number and your EEFax number on the "Originator Telephone Number" line at the bottom of Form 3210.
----	---

- b. Any payments received (a check) with Form 3244-A, must be placed in a separate addressed envelope.

1) SSN/EIN:	Enter the SSN or EIN (as applicable).
2) Form number/MFT:	MFT:
Form 5330	MFT 76
Form 990-T	MFT 34
3) Tax Period:	Enter the Tax Year.
4) Plan Number:	Enter the plan number of the related plan.
5) Transaction date:	Enter the date the payment was received.
6) Taxpayer Name, address and zip code:	Enter the date the payment was received.
7) Transaction Data:	List the entire amount received for the year under transaction code 610 (Remittance With Return) and the same amount under "Total payment".
8) Remarks:	List the check number and the amount of the check. If the check represents payments for more than one year, list each year and the amount applied to each year.
9) Prepared by:	Enter your name and group number.

**Note:** A Form 3244-A is required for each year for which payment is received. For example, if you receive a check from the taxpayer for \$5,000 that includes payment of \$2,000 for 201712 and \$3,000 for 201812, you should prepare a Form 3244-A for 201712 reflecting \$2,000 next to transaction code 610 and a second Form 3244-A for 201812 reflecting \$3,000 next to transaction code 610.

**Note:** See Employee Plans Examination Exhibits for an example of a completed Form 3244-A.

- c. Form 3198-A:
    1. List all years for which the taxpayer's Form(s) are being processed simultaneously, with the applicable statute date.
    2. In the "Other Instructions" section, provide instructions regarding the assessment or non-assessment of IRC 6651(a) penalties. If penalties are not being assessed, write and highlight: "Do Not Assess Penalties, Reasonable Cause Established."

**Note:** The OSC will automatically assess IRC 6651(a) penalties unless specific instructions to the contrary are provided.

**Note:** The examiner should document in the workpapers the basis for the assessment or non-assessment of IRC 6651(a) penalties.
  - d. Original delinquent return

**Note:** Fasten items b) through d) in corresponding order with the payment on top and the return on the bottom.
  - e. Paper clip the items listed in items (a) through (d), in order.
- (10) Before mailing, scan a copy of the entire package and save in the RCCMS case file using the TE/GE RCCMS Naming Convention.
  - (11) Mail the delinquent packages to the campus address noted in Contact Information at Employee Plans Examination Exhibits.
    - Form 5330 or 990-T – Ogden Submission Processing Campus
  - (12) Forms 5330 or 990-T: If the remittance is \$100,000 or more, send an email to the teller unit &CTR ODN Ogden Tellers with the following information:
    - UPS tracking number
    - Dollar amount of the remittance
    - The city/state the package is being shipped from

**Note:** See IRM 5.1.2.6.1, Large Dollar Remittances.
  - (13) The following additional actions are required upon receipt of a single remittance of \$1 million or more:
    - a. Locate the designated remittance liaison on the Submission Processing Field Office Payment Processing page website at [http://win.web.irs.gov/SP/Programs\\_Information/Standard\\_Proce\\_Webpages/Field\\_Office\\_Pymt\\_Proc.htm](http://win.web.irs.gov/SP/Programs_Information/Standard_Proce_Webpages/Field_Office_Pymt_Proc.htm) to obtain the OSC liaison's email address provided in the "Phone" column.
    - b. Call, email, or EEFax the liaison that you will be sending a single remittance of \$1 million or more and provide the tracking number for the overnight package containing the remittance. See IRM 5.1.2.6.1.1, Remittance Over \$1M.
  - (14) When addressing the Express Services Routing slip (Form 9814):
    - a. Forms 5330 or 990-T: Use "Mail Supervisor" as the recipient's name and recipient phone number of (801) 620-3750 (with or without payment).
    - b. The address listed on Form 9814 should match the address on Form 3210. Make sure the proper mail stop is used.

- (15) Annotate in bold letters on the top of the retained copy: "DELINQUENT RETURN SECURED BY TE/GE EMPLOYEE PLANS— ORIGINAL RETURN SENT TO OGDEN SC (or KANSAS CITY) ON 00/00/00" (list the date mailed).
- (16) Forms 5330 or 990-T: If an entity module was not previously established, generate a Form 4442 in accordance with IRM 4.70.14.3.9.5.2.2, EP Preparation of Form 4442. Form 4442 can be emailed or EEFaxed to the EP AIMS Coordinator. See Employee Plans Examination Exhibits for the EP AIMS Coordinator's contact information.
- (17) You no longer need to establish delinquent Forms 5330, Forms 5329, or Forms 990-T that you accept as filed on RCCMS and AIMS. You will still need to process the accepted as filed delinquent returns to the service center, but you will not need to establish these returns for examination on RCCMS and AIMS.
- (18) In instances where you don't need to examine a secured return as you can accept it as filed, then after processing it to the Service Center, you only need to save a copy of the accepted return, the acknowledged Form 3210 received from the service center, or comparable record of confirmed receipt document (i.e., EEFax confirmation) in RCCMS.
- (19) Record the receipt of the return by completing the electronic RCCMS 3198-A Special Handling checksheet in the RCCMS compliance activity of the primary examination return.
- (20) Also, properly note in your workpapers that you accepted the returns as filed. Use the RCCMS 3198-A Special Handling checksheet to record the number and types of return secured in RCCMS to let CP&C capture the fact that you secured a return and accepted it without having to establish a related examination or create a Form 5329 discrepancy adjustment.
- (21) For returns not accepted as filed (you do not agree with the tax reported). Periodically request a BMFOLT print to confirm that the return was processed. When the return posts, a 150 transaction code (TC 150) and dollar amounts will be reflected on the account.

**Note:** It normally takes four to eight weeks for the campus to process a return once it is received.

- (22) When the return posts, examiners will use RCCMS to expand the scope of an examination and establish AIMS controls through RCCMS of filed Form 5330 returns, and filed Form 990-T returns that have posted to the master file that they determine warrant examination.
- (23) Follow directions in these IRM sections to create and establish a RCCMS compliance activity, including AIMS controls for previously filed returns that you will examine:
  - a. IRM 4.70.13.9.7.1.1, EP Form 5330 Series Returns Determined to Be Examined
  - b. IRM 4.70.13.9.7.1.2, EP Form 990-T Series Returns Determined to Be Examined

4.70.13.9.5.2.1  
(11-22-2023)

## EP Securing Forms 5330 or 990-T Not Yet Due

- (1) If the taxable period extends into a taxable year for which a Form is not yet due:
  - a. Notify the taxpayer of the requirements to file Form 5330, 990-T and pay the tax shown thereon for such taxable year.
  - b. If the taxpayer chooses to voluntarily file the return with the examiner, check the accuracy of the return, prepare the return package, and forward it to the campus in accordance with IRM 4.70.13.9.5.3, Processing Delinquent Forms 5330 and 990-T, with the following exceptions.

**Note:** Write, "RETURN SECURED BY TE/GE: EMPLOYEE PLANS" at the top of the return. Do **not** prepare or submit Form 3198-A.

- (2) Establish the return on RCCMS and AIMS and examine it at the group manager's discretion.

**Note:** Since the return is **not yet due**, the group manager has complete discretion on whether it is established on RCCMS and AIMS.

- (3) If the return is established on RCCMS and AIMS, close the case disposal code 02 (AIMS) and 107 (RCCMS), and follow the procedures for delinquent secured returns found in IRM 4.70.13.9.5.3, Processing Delinquent Forms 5330 and 990-T Received from the Taxpayer.
- (4) If the group manager determines not to establish the return on RCCMS and AIMS, list the tax for the years not established on the "EP taxes" line of the RCCMS Closing Record of the related Form 5500 exam.

**Note:** See the note under paragraph (2) of this section.

- (5) If the taxpayer does not voluntarily file the Form not yet due, prepare a referral for a future year using Form 5666 and send it to Classification. Form 5666 can be sent by email or regular mail.

**Note:** See Contact Information in *Employee Plans Examination Exhibits*, for Classification's addresses.

4.70.13.9.5.2.2  
(11-22-2023)

## EP Preparation of Form 4442

- (1) Prepare Form 4442 to establish an entity module on the BMF.
- (2) The following line items will be completed when preparing Form 4442:
  - a. ITEM 1 (Recipient's Name): Enter the name of the examiner conducting the exam.
  - b. ITEM 2 (ID Number): Enter the examiner's group number and primary business code for the Area. The codes are:

Primary Business Code (PBC)	Area
401	Northeast
402	Mid-Atlantic
403	Great Lakes
404	Gulf Coast

406	Pacific Coast
410	Exam Programs and Review

- c. ITEM 3 (Received Date): Enter the current date.
- d. ITEM 8 (Taxpayer's Name): Enter the taxpayer's name.
- e. ITEM 9 (TIN): Enter the taxpayer's SSN or EIN. If the taxpayer has an SSN, enter a "V" after the SSN.
- f. ITEM 13 (Current Address): Enter the taxpayer's address.
- g. ITEM 15 (Forms): Enter 5330.
- h. ITEM 18 (Processing Campus): Enter Ogden.

- (3) EEFax or email the completed Form 4442 to the EP AIMS Coordinator. See Employee Plans Examination Exhibits for contact information. Include a contact name and phone number and EEFax number.
- (4) The TE/GE Closing Group will call, email or EEFax the examiner Form 4442 back to the examiner, providing notification that the request has been completed. See *Employee Plan Examination Exhibits* for an example of a completed Form 4442.

## 4.70.13.9.5.3

(11-22-2023)

**EO Required****Completeness Review of Secured Delinquent and Amended Form 990 Series Returns**

- (1) **Background:** Prior to the new process put in place on January 8, 2018, the IRS accepted and processed all paper-filed Form 990 series returns, even if they were incomplete or the wrong form was used.
- (2) **Procedural Change:** All delinquent or amended Form 990 series returns, secured during an examination, are required to be scanned and emailed to the Campus for review, to ensure the return is complete.
  - a. Form 990 series returns should be emailed to Kathi Palmer at *Kathi.T.Palmer@irs.gov*.
  - b. You should keep the case open for two weeks after sending the scanned returns to the Campus.
  - c. The returns will be reviewed and sent back to you, within two weeks of receipt, if there is missing or inaccurate information.
  - d. If the return isn't sent back within the two-week period, the return is deemed complete and will be posted within four to six weeks.

## 4.70.13.9.5.4

(11-22-2023)

**EO Processing****Delinquent Filed Returns (Non-employment Returns)**

- (1) Send all secured delinquent return packages to the FAST.
- (2) If the delinquency involves:
  - A return not under the examination jurisdiction of EO Exams, see IRM 4.70.13.9.5.10, Delinquent Returns Secured for Other Operating Division Jurisdiction.
  - Payee information returns, see IRM 4.70.13.9.5.6, Processing Delinquent Information Returns (Other than Form 5500 series Returns).
- (3) **Securing a Delinquent Return by Fax.** You may secure a delinquent (or converted) return by fax. Refer to IRM 3.12.279.32, Facsimile (FAX) Guidelines.
  - The IRS only accepts a faxed original return in order to verify the taxpayer's claim that they filed the original return.

- See IRM 4.19.4.3.22, Faxed Signatures - Replies.

**Caution:** Taxpayers may never file an original return by fax.

(4) Check the secured return:

- For a list of items to check on a secured delinquent return, see table at IRM 4.5.3.19.1.1.
- If there is incorrect or missing information on the return, give the taxpayer an opportunity to submit a correct return.

**Note:** Incomplete returns are not acceptable.

**Note:** If the taxpayer insists on filing a tax return with information you disagree with, collect the return subject to examination adjustment.

**Note:** If you believe a return to be fraudulent, consult with the Fraud Technical Advisor. See IRM 4.70.13.13.

(5) Prepare the original delinquent return package as follows:

- a. Date stamp the return when received.
- b. Don't cover a taxpayer entry. Avoid areas reserved for the Campus' Computer Condition Codes. See Exhibit 4.70.13-2, EO Computer Condition Code Locations.
- c. If no date stamp is available, annotate in the middle of the return over the wording, but not over the numbers, "Received", the date received, your name and title.
- d. Leave sufficient space on the upper right margin of the return for the Campus to stamp the DLN
- e. Write across the top margin of the return in red, "Delinquent Return Secured by TE/GE".
- f. Converted returns only: Write across the top margin of the return in red, "Form 990 Converted to Form [1120 or 1041 or 990-PF]".
- g. Process any payments received within 24 hours. See IRM 4.70.14.3.
- h. Determine the application of penalties. See IRM 4.70.13.12.
- i. Prepare Form 13133 for each return.
- j. Prepare Form 3198-A for each return.

(6) **Assemble the original return package** in the following order front to back; then scan or photocopy the package:

- Form 13133.
- Form 3198-A.
- A copy of the payment instrument (check, cashiers check, etc.).
- A copy of Form 3244-A.
- A copy of the taxpayer's written penalty relief request.
- The original delinquent return.
- Mark "Copy - Do Not Process" at the top margin of copies of returns to avoid inadvertent duplicate processing.
- If scanned, upload the copies of the returns to RCCMS. These copies will serve as working returns if you examine them.

**Note:** If you waive a penalty under oral statement authority, include Form 886-A stating the cause provided by the taxpayer and your

determination of reasonable cause. See IRM 4.70.13.9.9 for reasonable cause guidance and oral statement authority.

- (7) Make a photocopy of the secured delinquent return for retention in the examination case file.
- (8) Prepare Form 13133, as follows, one for each original return to be processed:
  - Your name.
  - Your phone number.
  - Your address, including mail stop.
  - Check the delinquent return box.
  - For a list of valid computer condition codes, see Exhibit 4.70.13-2, EO Computer Condition Codes.

**Note:** If penalties are to be assessed, don't make notations in the penalty area of Form 13133.

- (9) Prepare Form 3198–A as follows, one for each original return to be processed:
  - Complete the heading of Form 3198–A.
  - Enter the correct ASED, listed in the earliest statute date field.
  - If there is a power of attorney (POA) for the return, check box for "Send All Communications Per POA".
  - Check the delinquent return box.
  - For annual EO information returns, notate in the "Other Instructions" section, "Assess Delinquency Penalty", or "Do Not Assess Delinquency Penalty-Reasonable Cause Established".
  - For **tax** returns if appropriate, notate in "Other Instructions" section, "Assess Delinquency Penalty", or "Do Not Assess Delinquency Penalty-Reasonable Cause Established".
  - Converted returns only: Indicate "Converted Return 1120 [1041 or 990-PF] Secured by TE/GE - HOLD Pending Outcome of Revocation [Disqualification or Reclassification to PF]".
- (10) Prepare Form 3210 and double envelopes addressed to the FAST.
  - Send the delinquent return package to the FAST. Follow the shipping instructions in IRM 4.70.13.9.11.
  - Converted returns only: Don't send a converted return package to the FAST. Mandatory Review will send it to the FAST when the underlying adverse status change (e.g., revocation) is sustained
- (11) Adjusting a Secured Delinquent Return. If you must adjust a secured delinquent tax return that reports amounts you disagree with, refer to IRM 4.70.13.9.7, for instructions. If you establish examination controls for a secured delinquent tax return:
  - You can't close the return until after a TC 150 posts.
  - Monitor IDRS for the posting of the delinquent return.
- (12) Securing a Delinquent Return After a TC 150 Posted. If you secure a delinquent return after a TC 150 posted, such as a posted SFR or posted Form 990-N, treat the original delinquent return as an amended return. Refer to IRM 4.70.13.9.5.5.1, Processing Delinquent Employment Tax Returns After TC 150 SFR Posts, for instructions.



- (13) If a primary return is open for examination and the exemption continues:
- Address the delinquent return on a Form 886-A, for inclusion with Letter 1744.
  - State on the Form 886-A that you will prepare a separate report for the tax change if you further adjust the secured delinquent tax return.

4.70.13.9.5.4.1  
(11-22-2023)  
**EO Employer  
Identification Number  
Issues**

- (1) In certain situations, there may be no EIN on a secured delinquent return.
- Example:** A Form 11-C is filed for a bartender of a veterans' organization that sells pull tabs to the public.
- (2) Any payments received can't be processed until an EIN is associated with the return.
- (3) Contact the person who signed the return to request an EIN.
- (4) If the return signer doesn't have an EIN, have them obtain an EIN via the [www.irs.gov](https://www.irs.gov) site, or directly at <https://www.irs.gov/businesses/small-businesses-self-employed/apply-for-an-employer-identification-number-ein-online>.
- (5) Taxpayers who complete the online application receive their new identification numbers immediately.
- (6) If the taxpayer doesn't have internet access, the taxpayer can complete Form SS-4, Application for Employer Identification Number, and fax or mail the form. They can also call 1-800-829-4933.
- (7) To avoid delays in processing returns and payments, have the taxpayer obtain the EIN prior to submitting a signed return.
- (8) If the return is received without an EIN, and the taxpayer subsequently obtains an EIN, write the EIN on the tax return.

4.70.13.9.5.5  
(11-22-2023)  
**Processing Delinquent  
Employment Tax  
Returns**

- (1) Before processing a delinquent return, the Examiner should
- a. Review an account transcript (BMFOLT). Procedures for processing a delinquent return depend upon whether or not a TC 150 has posted.
  - b. **EO:** ensure that the entity has a filing requirement for the type of return being established, e.g., if a Form 945, Annual Return of Withheld Federal Income Tax, is being secured or established, use ENMOD to determine there is a filing requirement. If there is none, submit Form 2363, Master File Entity Change, immediately to have the filing requirement added to the entity's account prior to establishing controls on RCCMS.
- (2) If no TC 150 has posted, the examiner will obtain a current transcript showing that no return has been filed. Attach the transcript to the back of the delinquent return, facing out. The transcript should be no older than two weeks, but less than seven days is preferred.
- (3) Date stamp the delinquent return with the date received and the examiner's name and title in the upper 1/3 of the return on the left side but not over any of the computations or numbers that have been input by the taxpayer.

- (4) Write across the top of the delinquent return, in red "Delinquent Return Secured by TE/GE" on the top margin of the original return.
- (5) Leave room in the upper right corner so the Campus will be able to enter the DLN.
- (6) Write "TC 599-CC096 or TC 599-CC094" (whichever is applicable) in red in the bottom right-hand margin of the delinquent return.
- (7) Verify the computations are correct.
- (8) Prepare Form 4844, Request for Terminal Action, to suppress notices to the taxpayer.
  - Write "TC 599 CC 096 or TC 599 CC 094" in the "Remarks" section of the form, with an explanation of why the action is requested.
  - Digitally sign Form 4844 and forward it to the TE/GE FAST Unit as an attachment via secure e-mail with a copy to the Group Manager.

**Note:** If the Group Manager requires all forms to be submitted thru him or her, then forward the signed copy of the form to the Group Manager via secure e-mail to be forwarded to FAST Unit for input. This form does not require the Group Manager's signature.
- (9) Prepare Form 13133 for each delinquent return:
  - Attach a separate Form 13133 to the front of each return. IF multiple tax periods exist, indicate on the first Form 13133 "BLOCK TOGETHER-Related tax periods/do not separate".
  - Check the box for "Delinquent Return".
  - Contact Name will be the Examiner's Name.
  - If penalties are to be assessed: make NO notations in the penalty area.
  - If penalties are NOT to be assessed: put an "X" in the box to the left of the applicable Computer Condition Codes/Return Processing Code. (See IRM 4.4.9.5.11.1(2)).
- (10) Prepare Form 3198-A for each original return:
  - Write 'Assess Failure to File and/or Failure to Pay Penalty' or 'Do not assess Failure to File and/or Failure to Pay Penalty Reasonable Cause Established', as applicable
  - If penalties are not to be assessed, the reason must be stated on the 3198-A; simply stating 'Reasonable Cause' is not sufficient.
  - If a Form 941, note if adjustment is interest-free
  - If the normal ASER has expired or is within three months of expiration, enter an "X" in the box to the left of "W" Bypass Submissions Processing Statute List.
  - To prevent tax deposits, withholding, or payments from refunding when the TC 150 posts, place an "X" in the BMF or IMF box to the left of "Hold Credits on Module-Generates TC 570".
- (11) If a payment is secured, prepare a Form 3244-A, Payment Posting Voucher-Examination, for each delinquent return. Post the payment as TC 610, Remittance with Return. Attach the copy of Form 3244-A to the delinquent return. The original Form 3244-A is sent with the payment for processing. Submit original delinquent return packages to the Campus indicated below.

- (12) Delinquent Return Package Assembly (top to bottom):
  - a. Form 3210, Document Transmittal
  - b. Form 4844, Request for Terminal Action
  - c. Form 13133, Expedite Processing Cycle
  - d. Form 3198-A, TE/GE Special Handling Notice
  - e. Form 3244-A, Payment Posting Voucher, if applicable, using TC 610 to record the remittance received with the return (if any)
  - f. BMFOLT or BMFOLI Current, showing no return posted (no TC 150)
- (13) All pages should be uniform in size and stapled together in the center of the left-hand margin of the package (separate package for each tax return), so that the pages can be turned for easy viewing.
- (14) Submit delinquent return package(s) (separate forms needed for each delinquent return secured) to the Group Manager for processing to the ESS/Ogden Closing Unit (exception: Form 730 and Form 11-C with payment go to Cincinnati).
- (15) ALL original delinquent return packages, with or without payment, will be submitted via traceable deliver, usually UPS, directly to the Submission Processing Programs (SPP) at the appropriate campus. For Example:

Scenario	Mailing Address
Send returns secured without remittance to:	Internal Revenue Service 1973 North Rulon White Blvd. Mail Stop 6052 Ogden, UT 84404
Send returns secured with remittance to:	Internal Revenue Service 1973 North Rulon White Blvd. Mail Stop 1999 Ogden, UT 84404
Send excise tax returns to:	Internal Revenue Service 201 West Second Street Mail Stop 281 Covington, KY 41019
Send foreign tax returns to:	Internal Revenue Service 2970 Market Street Philadel- phia, PA 19104

- (16) The examiner and their manager will need to determine if the delinquent return will be accepted as filed (deemed substantially correct) or if an examination of the return is warranted.
- (17) If the return is Accepted as Filed/Not Examined:
  - a. Retain an electronic copy of the delinquent return in the RCCMS Office Documents folder.
  - b. Prepare and send an appropriate letter, per Group Managers instructions for signature and mailing.

Letter 1024, Return Accepted as Filed
Letter 1024-T, Employment Tax Return Accepted As Filed
Letter 5334, Tax Return Accepted as Filed with Penalties

- c. Complete Form 2503, Survey After Assignment—Excise or Employment Tax.
  - d. Complete Form 3198-A, with notation, “Secured Delinquent Return, Survey After Assignment-DC 908”.
  - e. Close RCCMS activity as “survey after taxpayer contact”, using DC 908.
- (18) If the delinquent return will be part of the examination, then the Examiner will make a copy of the return for the case file and establish the AIMS record via RCCMS by completing the following steps:
- a. Write “COPY OF DELINQUENT RETURN SECURED BY TE/GE” in red across the top margin of the retained copy of the return, for your case file.
  - b. In the “Validate for:” field, select “Establish” and make sure there is a check mark in the “Update AIMS” box.
  - c. Update the following fields: --“Return Received” date under General tab --“Statute Date” under General tab --“Source Code” to “44 Delinquent Return” under Codes tab --“Push Code” to 020 Delinquent Return under Codes tab --“Reason for Request” enter “Delinquent Return Secured by TE/GE”
  - d. “Save and Close”
  - e. Highlight the activity in the List View pane. From Actions menu, select “Request Establishment” and synchronize. The AIMS record will establish once the Field Manager approves the action.
- (19) The examination may not be closed from the group until the TC 150 posts and a full AIMS record is established.
- (20) At this point, the case will be treated like any other examination. These are some common items included in the case file the list is not all-inclusive.
- Form 3198-A, notating “Secured Delinquent Return, Additional Adjustments”.
  - Form 3210, listing all delinquent return packages and payments.
  - Copy of original delinquent returns
  - Examination Report(s)
  - Form 4318, Work Paper Index with work papers detailing your exam steps
  - Form 9984, Activity Record
  - Work papers (electronic work papers should be loaded to the RCCMS Office Documents folder)
  - Closing Letter. Use appropriate letter for specific types of closures (agreed, unagreed, etc.)
  - Follow procedures for the type of closure (agreed, unagreed, etc.) when closing the examination.

4.70.13.9.5.5.1  
(11-22-2023)

## **Processing Delinquent Employment Tax Returns After TC 150 SFR Posts**

- (1) When delinquent returns are secured and the SFR TC 150 has already posted, the examiner will need to determine the accuracy of the submitted returns by examining them.
- (2) If the Examiner accepts the delinquent return without making additional adjustments, prepare:
  - a. Form 2504 series, as applicable, Agreement to Assessment and Collection of Additional Tax (taxpayer signature is not necessary because the report matches the amounts reflected on the signed delinquent return);
  - b. Form 4666, Summary of Employment Tax Examination;
  - c. Form 4668, Employment Tax Examination Changes Report, to reflect the amounts shown on the delinquent return.
  - d. Prepare Form 2275 with BMFOLR as the return document and attach a copy of the signed delinquent return.
  - e. The examination will be closed using normal closing procedures.

**Note:** On Form 3198-A indicate “Case is agreed based on taxpayer signature on delinquent return”.
- (3) If the Examiner does not accept the delinquent return without making additional adjustments then the return must be processed as a partial assessment in RCCMS unless the return shows no tax due. If the return shows no tax due, see paragraph (4) below since partial assessment procedures are not required. For returns showing a tax due amount the following partial assessment procedures are required.
  - a. Prepare reports matching the submitted delinquent returns and send them along with copies of the delinquent returns, RCCMS Closing Record, TE/GE Examined Closing Record, and 3198-A to the Field Manager for processing of the partial assessment. The Field Manager will forward the partial assessment package to the GE Closing Unit.
  - b. Complete partial assessment in RCCMS once closing unit has processed the partial assessment. For FSL/ET see Consolidated Case Closing Desk Guide for partial agreement (assessment) procedures.
  - c. Once the corrected figures are determined, prepare a report for any adjustments not reported on the delinquent returns. The case will then be processed using regular agreed and unagreed procedures depending on whether or not the taxpayer signs the report.
  - d. Prepare Form 3198-A. In the Other Instructions section, enter “SFR TC 150 Posted - Process Delinquent Return(s) as Final Closures”.
- (4) If the taxpayer submits a delinquent return to the Examiner showing no tax due then the secured return will be incorporated into the final exam report. Also, even though the delinquent return is not being processed, the receipt of a valid return does start the running of the statute of limitations. Update the “Return Received” date to the date the delinquent return was received and update the “Statute Date” in RCCMS.
- (5) Master File must be updated to show a delinquent return was secured after an SFR TC 150 was posted. Form 3177, Notice of Action for Entry on Master File, must be completed as follows:
  - a. Enter an “X” in the box marked “Other” at the bottom of the form.
  - b. Enter “TC 971 AC 013 Return Received Date MM/DD/YYYY” on the line next to the “Other” box.

- c. Forward Form 3177, Notice of Action for Entry on Master File, to the FAST Unit via encrypted E-mail (*\*TEGE FAST*).

4.70.13.9.5.6  
(11-22-2023)  
**Processing Delinquent  
Information Returns  
(Other than Form 5500  
Series Returns)**

- (1) During employment tax examinations, Examiners frequently identify information returns that were not furnished or filed. This subsection provides various procedures to be followed.

4.70.13.9.5.6.1  
(11-22-2023)  
**Delinquent Forms 1099  
Identified in Examination**

- (1) When conducting an examination, if the Examiner determines that the taxpayer failed to file required Forms 1099, they should secure the delinquent Forms 1099. The Examiner should require the payer to furnish the delinquent returns to payees and file them with the Examiner. In the alternative, the taxpayer should submit substantiation that the returns have been filed electronically through the Filing Information Returns Electronically (FIRE) system. If a payer refuses to file the delinquent returns, information return penalties should be considered using the rates for intentional disregard.
- (2) The payer should be given a reasonable time, e.g., 30 days, to prepare the delinquent information returns, furnish them to the payees, and file the information returns with the Examiner or through the FIRE system.
- (3) Examiners securing delinquent paper Forms 1099 should refer to IRM 4.23.8.10.4 for detailed processing instructions. The Form 1096, Annual Summary and Transmittal of U.S. Information Returns, should be date stamped and the delinquent Forms 1099 should be sent to the following address:

<b>If principal business, office or agency, or legal residence in the case of an individual, is located in:</b>	<b>Use the following address:</b>
Alabama, Arizona, Arkansas, Delaware, Florida, Georgia, Kentucky, Maine, Massachusetts, Mississippi, New Hampshire, New Jersey, New Mexico, New York, North Carolina, Ohio, Texas, Vermont, Virginia	Department of the Treasury, Internal Revenue Service Center, Austin, TX 73301
Alaska, Colorado, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Montana, Nebraska, Nevada, North Dakota, Oklahoma, Oregon, South Carolina, South Dakota, Tennessee, Utah, Washington, Wisconsin, Wyoming	Department of the Treasury, Internal Revenue Service Center, PO Box 219256, Kansas City, MO 64121-9256
California, Connecticut, District of Columbia, Louisiana, Maryland, Pennsylvania, Rhode Island, West Virginia	Department of the Treasury Internal Revenue Service Center Ogden, UT 84201

- (4) If the taxpayer files the delinquent returns electronically through the FIRE system, the Examiner should secure substantiation of the transmission to include in the workpapers. The FIRE system sends an e-mail to the filer that



contains the FILE STATUS and “Count of Payees” included in the file. A FILE STATUS of either “Good, Not Release” or “Good, Released” indicates that the file is, or will be, released for mainline processing. Files uploaded to FIRE are held for ten days to afford the taxpayer an opportunity to correct them, if necessary. A copy of this e-mail verification may serve as sufficient substantiation to be included in the workpapers.

- (5) High dollar delinquent Forms 1099 should be considered by the Examiner for potential income tax underreporting. The Examiner should prepare Form 5666, TE/GE Referral Information Report, and attach a copy of the delinquent Form 1099 for referral to SB/SE.
- (6) Copies of all delinquent Forms 1096 and 1099 are not needed in the examination case file; however, they are needed when information return penalties are being proposed. Scanned or electronic copies of Form(s) 1096 and 1099 secured should be named “CIVPEN.33.3. Delinquent. 1096 &1099. YYYY” (where “YYYY” represents the year of the returns submitted).
- (7) 7) Evaluate and address whether backup withholding applies when Forms 1099 were required but not filed or furnished and the taxpayer didn’t have the payee’s TIN at the time of making a reportable payment.
  - Prepare an Excel spreadsheet including the payee names, TINs, amounts paid to them and amounts eligible for IRC 3402(d)relief on the spreadsheet for payees who should have been, but were not, issued Form 1099-NEC.
  - Scan Forms 4669 into the RCCMS case file when feasible.
  - If you are unable to scan all the Forms 4669 into RCCMS, place the original Forms 4669 in a paper case file and close the paper file with the RCCMS case.
  - Name the Excel worksheet 34.2204.1 Delinquent F1099 BUWH and name the Forms 4669 34.2204.2.F4669.

4.70.13.9.5.6.2  
(11-22-2023)

**EO Processing Secured  
Non-Employee  
Information Returns**

- (1) Forms 1096/1099. When you secure information returns transmitted by Form 1096:
  - a. Ensure the organization prepared a separate transmittal Form 1096 for each type of information return.
  - b. If Form 1096 is not filed with you, prepare a Form 1096.
  - c. Resolve any discrepancies with the organization.
  - d. Stamp or write the earliest the IRS received date in the space above “Official Use Only” on the original transmittal form.
  - e. Enter “E” (Exam) in the first box under “Official Use Only”.
  - f. Don’t make any markings in the top margin of transmittal forms. This will interfere with the processing of these documents.
  - g. Across the bottom of the original Form 1096, annotate in red, “Delinquent Returns Secured by TE/GE - Penalty Considered”.
  - h. Make a copy of the original Form 1096 and information returns for the workpapers of the penalty case file.
  - i. If there’s no penalty case file, include copies of Form 1096 and secured information returns in the workpapers for the primary return case file.
  - j. **Submit** the original information returns and transmittal to the FAST via USPS or UPS. See IRM 10.5.1.6.9.3, Privacy Policy, Shipping, for shipping procedures.



- k. Annotate in Other Instructions of Form 3198-A for the penalty case file, "Information Returns Secured By Examiner".

**Note:** Don't send secured information returns directly to Campus addresses stated in IRM 20.1.7 and in IRM 4.23.8.10.1. Original returns secured by EO examiners must be routed through the FAST.

- (2) If you discover one of the circumstances in (a), (b) or (c) below, then consult your manager, and prepare and forward Form 5666 to the EO Referrals Group. The EO Referrals Group will then forward the information report to one of the SB/SE Identity Theft Coordinators. See IRM 4.23.9.16, Business Master File (BMF) Identity Theft Procedures - Overview
- a. An SSN can't be attributed to any specific person (e.g., the SSN is not a valid SSN),
  - b. An SSN belongs to someone who is deceased, or
  - c. An SSN belongs to a living person other than the person identified among the participants, then consult your manager, and prepare and forward Form 5666 to the EO Referrals Group. The EO Referrals Group will then forward the information report to one of the SB/SE Identity Theft Coordinators. See IRM 4.23.9.16, Business Master File (BMF) Identity Theft Procedures - Overview.

4.70.13.9.5.6.2.1  
(11-22-2023)

**EO Information Return Penalties**

- (1) These penalty procedures apply to EO examiners. For detailed technical and procedural information not covered in this manual refer to:
- IRM 20.1.1, Introduction to Penalty Relief.
  - IRM 20.1.7.2, Powers of Attorney for Civil Penalties.
  - IRM 20.1.7.3, Failure to File Correct Information Returns IRC 6721.
  - IRM 20.1.7.4, Failure to Furnish Correct Payee Statements IRC 6722.
  - IRM 20.1.7.5, Failure to Comply with Other Information Reporting Requirements IRC 6723.
  - IRM 20.1.7.1.4, Common Features, for information return penalties.
  - IRM 20.1.7.1.5, Penalty Dollar Amounts and Limitations.
  - IRM 20.1.7.8.1, Waivers, Definitions and Special Rules IRC 6724 – Reasonable Cause.
  - IRM Exhibit 20.1.7-1, IRC 6721 Penalty for Large Businesses with Gross Receipts Over \$5 Million.
  - IRM Exhibit 20.1.7-2, IRC 6721 Penalty for Small Businesses with Gross Receipts Less than or Equal to \$5 Million.
  - IRM Exhibit 20.1.7-3, IRC 6722 Penalty for Large Businesses with Gross Receipts Over \$5 Million.
  - IRM Exhibit 20.1.7-4, IRC 6722 Penalty for Small Businesses with Gross Receipts Less than or Equal to \$ Million.
  - IRM Exhibit 20.1.7-5, PMF Civil Penalty Transcript.
  - IRM 4.23.8.11, Information Return Penalty Case File.
  - IRM 4.23.9.13, Penalties for Failure to File Certain Information Returns or Furnish Certain Statements.
  - IRM Exhibit 4.23.9-1, Instructions for Determining Civil Penalty Statute of Limitations.
- (2) Secure a written penalty relief request.

- (3) If penalties apply, prepare an information return penalty case file, which is separate from the examination case file.
- (4) If penalty relief is granted, document the non-assessment of the penalty on Form 5773 for the penalty case file.
- (5) Create a paper case file to accompany the electronic case file. In RCCMS, underneath the main activity, select "File", "New", "Compliance Activity".

On the <b>General (1 of 2)</b> tab, enter the following:	
STEP:	ACTION/ENTRY
1	In the "Validate for:" drop down box, select "Establish".
2	Deselect the "Update AIMS" check box. Enter "TIN "Enter "T/P Name"
3	Select "Non-Return" in the "Type:" drop down box.
4	In the "Activity code" drop down box, select "507-Form 8278".
5	In the "Tax period:" field, enter the calendar year, i.e., 200912, 201012, etc.
6	In the "Return due:" field, use 2/28/XXXX (even though there are different due dates for filing versus furnishing the forms).
7	In the "Return received:" field, use the same date as the return due date, or, if applicable, use the delinquent return secured date.
8	In the "Statute:" field, use the date input in "Return Received" field plus three years.
9	If no return was filed, select "EE" in the "Alpha day" drop down box.
10	The penalty case should be a separate case file. Establish the penalty case file by highlighting the activity. From the top line menu, select Action->Request Establishment.

On the “ <b>Codes</b> ” tab, complete the normal required entries. In addition, enter the following:	
<b>STEP:</b>	<b>ACTION/ENTRY</b>
11	In the “MFT” IS 99.
12	In the “Return requisition code”; field select “3 - Return, Chargeout & Labels Not Requested”
13	In the “Project code field:”, use the same code as the primary return, However, if the case is NRP, use 8253.
14	In the “Source code:” field, select “45 – Reference and Information Returns”.
15	In the “Status Code:” field, select “12- Assigned for Evaluation”.

To complete the process, do the following:	
<b>STEP</b>	<b>ACTION/ENTRY</b>
16	“Save and Close”. The <b>Save in</b> screen appears.
17	The penalty case is placed in a separate case file. Mark the New Case button. Enter a case name that easily identifies taxpayer and type of case. Click “OK”.
18	Establish the penalty case file by highlighting the activity. From the top line menu, select “Action”, then “Request Establishment”.

- (6) Prepare Form 8278, Assessment and Abatement of Miscellaneous Civil Penalties.
- Prepare a Form 8278 for each tax year. \* Instructions for preparation of Form 8278 are found on page 2 of the form.
  - Follow additional Form 8278 instructions in IRM 4.23.8.11(8).
  - If you are not assessing a penalty that is otherwise applicable, enter the appropriate Penalty Reason Code (PRC) to identify why the penalty is being suppressed. See IRM Exhibit 20.1.1-2 for a list of appropriate PRCs and explanations.
  - Don't send a copy of Form 8278 to the taxpayer.
  - Form 8278 stays in the penalty case file.
- (7) Prepare Form 3645, Computation of Information Return Penalty.

- a. Prepare a Form 3645 for each tax year.
- b. Show the applicable code section and penalty rate for each form number.
- c. State the reason for the penalty on the bottom of the form.
- d. State whether the filer agreed with the penalty.
- e. State whether reasonable cause was considered.
- f. Don't send a copy of Form 3645 to the taxpayer.
- g. Form 3645 stays in the penalty case file.

(8) (8) Prepare Form 886-A.

- a. Include the issues, facts, law, taxpayer's position, and conclusion.
- b. Make a copy, and attach one copy of Form 886-A to Form 3645.

(9) Propose penalties to the organization as follows:

1. Attach the second copy of Form 886-A to Letter 5005 or Letter 5005- P.
2. Issue Letter 5005, Information Return Penalty Notice (Form W-2).
3. Issue Letter 5005-P, Information Return Penalty Notice (Form 1099).

**Note:** Propose Form W-2 penalties at the same time as the employment tax examination.

**Note:** If you granted an extension to file Form W-2c, penalties don't become assessable until March 1st of the year following the year you close your examination.

- (10) If the taxpayer agrees with the penalty in the manner stated in Letter 5005 or Letter 5005-P, request payment. Follow remittance procedures in IRM 4.70.13.9.10.

**Note:** Don't secure an agreement on Form 2504 or Form 4549.

- (11) Consider the applicability of backup withholding under IRC 3406. See IRM 4.23.8.13.

- (12) Under IRC 6674, an employer who willfully furnishes a false or fraudulent statement, or who willfully fails to furnish a statement in the manner, at the time, and showing the information required under IRC 6051 or IRC 6053(b) may be subject to a penalty of \$50 for each failure, which shall be assessed and collected in the same manner as the tax on employers imposed under IRC 3111. There is no maximum limit on the amount of penalties under IRC 6674. See IRM 20.1.10.7, IRC 6674, Fraudulent Statement or Failure to Furnish Statement to Employee.

4.70.13.9.5.7  
(11-22-2023)

**Special Procedures For  
Unagreed Worker  
Classification**

- (1) If a worker classification case is unagreed, and neither Form 1099-NEC nor Form W-2 were filed, follow these special procedures:

- a. Prepare two Forms 8278 to reflect penalty assessments. Don't provide to the taxpayer.
- b. Prepare two Forms 3645 to reflect penalty assessments. Don't provide to the taxpayer.
- c. The first set (pair) of Forms 8278 and 3645 will reflect Form W-2 penalty assessments.
- d. The second set of Forms 8278 and 3645 will reflect Form 1099-NEC penalty assessments.

- e. Staple the first set (Form W-2 penalty) to the inside front cover of the penalty case file folder.
- f. Staple the second set (Form 1099-NEC penalty) to the inside back cover of the penalty case file folder.
- g. Attach a post-It note to the first set (Form W-2 penalty) indicating "Primary Examiner Position".
- h. Attach a post-It note to the second set (Form 1099-NEC) indicating "Alternate Examiner Position".
- i. Prepare two explanations on Form 5773 at Section I, Penalties, Subsection 6, Other. Title the first explanation, "*Primary Examiner Position*". Title the second explanation, "*Alternate Examiner Position*".
- j. Enter in the "Other" section of Form 3198-A, "Suspend assessment of information return penalties until the taxpayer's request for appeal period has expired."
- k. Associate the penalty case file with the employment tax case file under examination.

**Note:** If the organization doesn't request an Appeals conference for the worker reclassification issue, the civil penalty recommendation shown in the penalty package as the "Primary Examiner Position" will be processed. If an Appeals Conference is requested, the civil penalty package with the worker classification case file under examination will be closed to Appeals by the review function, where a final penalty determination will be made.

4.70.13.9.5.8  
(11-22-2023)  
**Delinquent Forms  
W-2/W-2c Secured by  
Examiner During  
Examination**

- (1) Examiners are expected to secure delinquent Forms W-2, Wage and Tax Statement, and Form W-3, Transmittal of Wage and Tax Statements, prior to closing an exam.
- (2) Per Treasury Regulations, Forms W-2c, Corrected Wage and Tax Statement, and Forms W-3c, Transmittal of Corrected Wage and Tax Statements, are not required to be filed until January 31st of the year following the year the examination is completed but the taxpayer should be encouraged to file them earlier.
- (3) If the employer is expected to file 250 or more Forms W-2c during a calendar year, the employer is required to file them electronically. Taxpayers should be referred to the SSA website for the current versions of Specifications for Filing Forms W-2 Electronically (EFW2) and Specifications for Filing Forms W-2c Electronically (EFW2C).
- (4) If the taxpayer files the delinquent Forms W-2, W-3, W-2c, or W-3c electronically through the SSA Electronic Wage Reporting (EWR) system, then the Examiner should secure documentation from the taxpayer verifying the transmission. After submitting the file, the taxpayer can print the "Confirmation Receipt-Your File was Received" page and submit this to the Examiner as documentation of the transmission. The confirmation receipt includes the Wage File Identifier (WFID) and should be included in the workpapers as sufficient filing substantiation.

4.70.13.9.5.8.1  
(11-22-2023)

**EO Delinquent Forms  
W-2/W-2c Secured by  
Examiner During  
Examination**

(1) **Forms W-2 and W-2c wage statements:**

- a. After an agreed employment tax change, provide the employer a reasonable time, i.e., 30 days, to prepare the wage statements.
- b. In some circumstances, you may give the employer additional time to submit these returns, for example, where it is determined that reasonable cause exists. Don't delay closure of the employment tax examination without reasonable cause.
- c. If the employer can't file the wage statements with you, advise the employer to file the required Forms W-2 or W-2c directly with the Social Security Administration (SSA). See [www.socialsecurity.gov/employer](http://www.socialsecurity.gov/employer).
- d. Advise the employer to File the wage statements electronically with the SSA if the employer is required to file 250 or more returns.
- e. Go to IRM 4.70.13.9.5.8.1.1, Delinquent Forms W-2/W-2c Not Secured by Examiner During Examination, if the wage statements are not secured.

- (2) If the employer files Forms W-2 and W-2c electronically with the SSA during the 30-day period plus extension while your employment tax case is open, secure proof that the wage statements were filed, such as a confirmation from the SSA.

- (3) If the employer files Forms W-2 and W-2c with you in paper form during the 30-day period plus extension while your employment tax case is open, process the paper documents as follows:

- a. Reconcile FICA wages on Form W-3 and W-3c to FICA wages on Form 4668.
- b. Resolve any discrepancies with the organization.
- c. Stamp or write the received date in the space above "Official Use Only" on the original transmittal form.
- d. Across the bottom of the original Form W-3 or W-3c, annotate in red, "Delinquent Wage Statements Secured by TE/GE - Penalty Considered".
- e. Make a copy of the original Form W-3 or W-3c and wage statements for the workpapers of the penalty case file.
- f. Don't make any markings in the top margin of transmittal forms. This will interfere with the processing of these documents.
- g. If there's no penalty case file, include the copies of the transmittal and secured wage statements in the workpapers for the employment tax case file.
- h. Submit the original wage statements and transmittal to the Social Security Administration in accordance with the instructions to Form W-3: Social Security Administration, Direct Operations Center, Wilkes Barre, PA 18769-0001

**Note:** If you use "Certified Mail" to file, change the ZIP code to "18769-0002".

**Note:** If you use an IRS-approved private delivery service, add "ATTN: W- 2 Process, 1150 E. Mountain Dr." to the address and change the ZIP code to "18702-7997".

- i. Annotate in "Other Instructions" of Form 3198-A for the employment tax case file and at the bottom of Form 4668 **Wage Statements Secured By Examiner**.

- (4) If you secured Forms W-2 by reason of converting independent contractors to employees:
  - a. Annotate in the "Other Instructions" section of Form 3198-A, and on the top of Form 4668, "Reclassification - Self-Employed/Employee Status".
  - b. Advise the organization to take prompt action in notifying their employees so that the workers will have the opportunity to file a claim for refund if they did pay self-employment tax on the same wages.
  - c. Provide the organization with an example of a letter they would issue to their workers explaining why they are receiving a wage statement and Notice 989.
  - d. See a sample of the letter for use only by the employer in IRM Exhibit 4.23.10-9, Filing Instructions for Reclassified Workers.
- (5) If you discover:
  - An SSN can't be attributed to any specific person (that is, the SSN is not a valid SSN).
  - An SSN belongs to someone who is deceased, or
  - An SSN belongs to a living person other than the person identified among the participants. Then, consult your manager, and prepare and forward Form 5666 to the EO Referrals Group. The EO Referrals Group will then forward the information report to one of the SB/SE Identity Theft Coordinators. See IRM 4.23.9.16, Business Master File (BMF) Identity Theft Procedures - Overview.

4.70.13.9.5.8.1.1  
(11-22-2023)  
**Delinquent Forms  
W-2/W-2c Not Secured  
by Examiner During  
Examination**

- (1) If Forms W-2, W-3, W-2c, or W-3c are not obtained from the employer prior to the exam being closed, the Examiner will notify the employer that the returns must be filed with the Social Security Administration by the due date prescribed on Form 4668, or a civil penalty may apply.
- (2) If the taxpayer refuses to file delinquent Forms W-2 and W-3 then the Examiner should consider whether or not the Failure to File and Failure to Furnish penalties should be recommended using the intentional disregard provisions under IRC 6721(e) and IRC 6722(e). The taxpayer's appeal rights are post-assessment; the taxpayer will not be able to appeal the civil penalties until Forms W-2 & W-3 have been filed.
- (3) The Examiner will attach a list of employees who should receive Forms W-2 or W-2c to Form 4668 providing the:
  - a. Worker's name
  - b. Amount of adjustment to total compensation, social security wages, and Medicare wages
  - c. Related employment tax adjustments.
- (4) Until the Form 4668 is updated, **Insert the following instructions on the bottom of the Form 4668:**

"Furnish Form W-2 (Wage and Tax Statement) or Form W-2c (Corrected Wage and Tax Statement) on or before January 31, \_\_\_\_ [Insert year] to each of the \_\_\_\_ [Insert number] employees whose wages are adjusted by this report."



“File Forms W-2 with Form W-3 (Transmittal of Wage and Tax Statements) or Forms W-2c with Form W-3c (Transmittal of Corrected Wage and Tax Statements) on or before January 31, \_\_\_\_ [ Insert year] with the Social Security Administration (SSA).”

“IRC 6721 and 6722 provide penalties for failure to file and failure to furnish information returns. You must file the information returns electronically if you are required to file 250 or more returns. To obtain specifications for e-filing your returns, visit the SSA’s website at [www.socialsecurity.gov/employer](http://www.socialsecurity.gov/employer). If filing paper returns, file with the SSA at the appropriate address in the General Instructions for Forms W-2 and W-3 (Including W-2c, and W-3c).”

- (5) EO: Prepare a tickler file for monitoring the receipt of Forms W-2 and W-3 or Forms W-2c and W-3c. The “Tickler File” will include a copy of:
- Form 2504, signed by the organization if agreed.
  - Form 4668 for each year examined.
  - The Employment Tax Examination Report with a full explanation of the issues.
  - List of employees whose wages are to be reported on Forms W-2 or W-2c.
  - If Failure to File and Failure to Furnish Penalties have already been assessed and the organization still refuses to file information returns, recommend consideration of the penalty under IRC 7203, Willful Failure to File, in the tickler file. The organization’s appeal rights are post-assessment.
- (6) If the case is fully electronic, the file should be named “3.F4668.EE LIST”.

4.70.13.9.5.8.2  
(11-22-2023)  
**Delinquent Forms  
W-2/W-2c Secured by  
Examiner  
Post-Examination**

- (1) If delinquent Forms W-2, W-2c, W-3, or W-3c are provided to the Examiner after the case is closed, it is the responsibility of the Examiner to date stamp the Form W-3 or W-3c and forward copies of these items to SSA.

4.70.13.9.5.8.3  
(11-22-2023)  
**Procedures for Failure  
to File Form W-2  
(Unagreed Case)**

- (1) When the Examiner recommends assessment of penalties for failure to file and failure to furnish Form W-2 involving reclassification of workers to employee status and the case is unagreed, the appropriate Information Return Penalty package will be prepared. When neither Form 1099 nor Form W-2 was filed, follow the procedures in IRM 4.23.8.10.3.

4.70.13.9.5.9  
(11-22-2023)  
**TEB Procedures For  
Secured Delinquent and  
Late Filed Returns and  
Forms**

- (1) During the course of an examination, an examiner may secure a delinquent or late filed return or form, including forms from the Form 8038 series and Form 8703 (a “Delinquent Return”). Processing secured Delinquent Returns in accordance with the applicable procedures helps to ensure the accuracy of reported exam results.

4.70.13.9.5.9.1  
(11-22-2023)

**TEB Procedures for  
Processing Delinquent  
Returns**

- (1) Process secured Delinquent Returns using the procedures in this section.
- (2) Obtain BMFOLI for the taxpayer identification number (TIN) and the tax period to which the secured Delinquent Return relates. Delinquent Returns can include:

MFT	RETURN OR FORM
46	Form 8038, Information Return for Tax Exempt Private Activity Bond Issues
46	Form 8038-G, Information Return for Tax Exempt Governmental Obligations
46	Form 8038-GC, Information Return for Small Tax Exempt Governmental Bond Issues, Leases, and Installment Sales
46	Form 8038-R, Request for Recovery of Overpayments Under Arbitrage Rebate Provisions
46	Form 8038-T, Arbitrage Rebate, Yield Reduction and Penalty in Lieu of Arbitrage
46	Form 8038-CP, Return for Credit Payments to Issuers of Qualified Bonds
46	Form 8703, Annual Certification of a Residential Rental Project
85	Form 8038-B, Information Return for Build America Bonds and Recovery Zone Economic Development Bonds
86	Form 8038-TC, Information Return for Tax Credit and Specified Tax Credit Bonds

- (3) Select a report number to use to process a Delinquent Return. The report number should be a three- digit number within the appropriate range (see IRM 3.11.26.3.1(2) for an explanation of the report numbering system) which has not already been used for the applicable tax period. Review BMFOLI and verify that the report number selected does not duplicate any account module listed on the Master File for such period. See the Instructions for the Form 8038-CP for additional limitations on the report numbers for that form.

**Note:** Form 8038-T is filed using the same tax period as the bond issuance to which it relates.

- (4) Complete these procedures for processing of the Delinquent Return:
  - a. Verify the return is complete.
  - b. Date stamp the received date on the first page of the return.
  - c. Underline in red the four letters in the name block representing the Name Control on IDRS.
  - d. Write in red on the top margin of the secured return "DELINQUENT RETURN SECURED BY TE/GE".

- e. Write in red, in the report number box, the number selected based on IDRS research.
- (5) Prepare Form 3210 to accompany the Delinquent Return package to the Service Center. Include information on the Form 3210, Document Transmittal, to alert the Service Center of the submission of an original return and payment, if any. Include the taxpayer's name, EIN, tax form, MFT, tax period, and for submissions with payment, the amount of the payment, check number and any required Form 3244-A on Form 3210. Include the originator's complete name, address, and mail stop to ensure timely acknowledgement of the Form 3210.
- (6) Include all required documents relating to each Delinquent Return. Multiple Delinquent Returns may be submitted on the same Form 3210. Include these items in the package, in the order listed:
  - Form 3210, Document Transmittal.
  - Original check, if applicable.
  - Form 3244-A, if applicable.
  - Original delinquent return.

**Note:** You don't have to prepare Form 3244-A when the payment and return are submitted together to the Ogden Campus for processing. Whenever you send a payment without a return, you must prepare Form 3244-A, using normal payment processing procedures.

- (7) For large payments of **\$100,000 or more**, mail the Delinquent Return package overnight to:
 

Internal Revenue Service  
 Attention: Field Office Remittance Liaison Stop 2003 - Ogden Submission Processing  
 1973 North Rulon White BLVD  
 Ogden, UT 84404  
 Phone Number: (801) 620-3972
- (8) An e-mail notification is required when submitting payments of **\$100,000 or more**. Notify the teller unit at: & CTR ODN OGDEN TELLERS and include the following information in the e-mail:
  - Mailing date of the payment.
  - Name and address of the submitter.
  - Amount of each check.
  - UPS tracking number for the large remittance.

- (9) For payments **less than \$100,000**, the Delinquent Return package is to be mailed **overnight** to:
 

Internal Revenue Service  
 Attention: Field Office Remittance Liaison Stop 2003 - Ogden Submission Processing  
 1973 North Rulon White BLVD  
 Ogden, UT 84404  
 Phone Number: (801) 620-3972

- (10) When there is **no remittance** with the submission, the Delinquent Return package must be mailed to:
- Internal Revenue Service  
Stop 6054 - Ogden Submission Processing  
1973 North Rulon White BLVD  
Ogden, UT 84404  
Phone Number: (801) 620-3702
- (11) The payment threshold is determined for each individual return submitted and not collectively.
- (12) Follow-up on any Form 3210 not acknowledged within 10 days of submission. Fax the Service Center to request acknowledgement of the submission and provide a copy of each transmittal requiring acknowledgement. See IRM 5.1.2.4.5.1. Fax requests to (855) 318-9148, ATTN: Field Office Clerks.
- (13) Late filing and other errors involving Form 8328, Carryforward Election of Unused Private Activity Bond Volume Cap, cannot be corrected through a late or amended filing. Determine whether a closing agreement or adverse determination is appropriate.

4.70.13.9.5.9.2  
(11-22-2023)

#### TEB Monitoring Posting

- (1) The exam group monitors the Master File to ensure the payment (evidenced by a transaction code (TC 610) and the assessment (TC 150) post to the same module.
- a. These postings typically occur within six to eight weeks.
  - b. Ensure the related payment and assessment are posted to the correct report number.
  - c. If the TC 610 and TC 150 do not post to the same report number, the payment must be transferred to the TC 150 report number.
  - d. To execute this transfer, submit a request to the designated analyst and provide the following information:

Employer Identification Number (EIN)
Tax Period
Report number to which the payment posted
Report number to which the return assessment posted
The date the return was received
The amount of the payment

4.70.13.9.5.9.3  
(11-22-2023)

#### TEB Establishment on RCCMS and AIMS

- (1) The assigned examiner is responsible for establishing the delinquent return on AIMS through RCCMS, whether the filing of the delinquent return occurs per the procedures of IRM 4.70.13.9.5.9 (the original filing secured by the examiner) or the issuer's direct filing with the Service Center as a result of the exam. Following the TC 150 posting, information necessary to establish the delinquent return on RCCMS is available and the case must be established in status 12. After establishing the case on RCCMS and AIMS, request closure of the case using disposal code 208, Delinquent Return Secured.

4.70.13.9.5.9.4  
(11-22-2023)

## TEB Request for Waiver of Penalty on Failure to Pay Rebate on Time

- (2) When an issuer files a delinquent Form 8038-T return, whether under the procedures of IRM 4.70.13.9.5.9 or directly with the Service Center, consider applying penalties under IRC 148(f)(7) and Regulation §1.148-3(h).

- (1) If a delinquent Form 8038-T includes a request for the waiver of penalty under Reg. 1.148-3(h)(3), the examiner securing the return must make an appropriate determination.

- a. If the bonds to which the delinquent Form 8038-T pertains are currently under examination, the penalty will only be waived in unusual circumstances.
- b. Send Letter 4561, Penalty Waiver, under the signature of the PM to inform the issuer of the denial of the waiver request.

**Note:** Issuers are not entitled to appeal a denial of the request for a waiver.

- (2) For cases in which the examiner proposes to waive all or a part of the penalty in lieu of loss of tax exemption, submit the recommendation through the group manager and outline the basis for the proposed waiver.

**Note:** The case file will be documented to support the penalty treatment determined.

- (3) If all penalty amounts required under the provisions of IRC 148(f)(7) and the applicable regulations thereunder were not paid at the time the delinquent return was secured, and no administrative relief is otherwise provided, the issuer must pay the required amounts or you must proceed with proposing that the bonds are arbitrage bonds.

4.70.13.9.5.9.5  
(11-22-2023)

## TEB Resequencing Non-Established Returns - Background

- (1) During an exam, you may determine that the EIN or name associated with the examined return is incorrect on the Master File. If this happens, the return must be resequenced to correct the erroneous information.

4.70.13.9.5.9.5.1  
(11-22-2023)

## TEB Resequencing Procedures

- (1) When you determine that a return must be resequenced to correct erroneous Master File information for an examined return, notify your group manager and take the following steps:
  1. Close the original case Survey after Assignment, Disposal Code 908, and document the case chronology explaining the reason for the closure.
  2. The group manager notes approval for the closure on the CCR, updates the case to Status 51, and transfers it to the closing unit via RCCMS
  3. Send an INOLE print with the correct EIN and the return to Ogden Service Center to be re-sequenced, which generally requires four to eight weeks to process.
  4. Monitor the status of the return.
  5. Once the return has been resequenced, ask your group manager to request the Ogden Service Center to send the case to the CPC manager for assignment to the CL4 TEB Classifier.
  6. The TEB Classifier will establish the case on RCCMS and AIMS and transfer the case to the TEB Virtual Shelf as per guidelines in the CL4 CA Desk Guide Section 3.

7. When the resequenced return is assigned to you, update the case to Status 12. When you complete the exam, close the case per IRM 4.70.14, Resolving the Examination.

4.70.13.9.5.10  
(11-22-2023)

**Delinquent Returns  
Secured For Other  
Operating Division  
Jurisdiction**

- (1) You can solicit delinquent returns not under your functional jurisdiction if you know they are delinquent.
- (2) If you secure delinquent returns not under your functional jurisdiction:
  1. Scan (or copy, if a scanner isn't available) the delinquent or amended return.
  2. Forward the return for processing in accordance with the return's instructions.
  3. Prepare Form 5666 if:

The taxpayer refuses to file the return.

You reasonably believe the return is due, but you are unable to make a determination of the delinquency.

You aren't technically qualified to determine whether the information reported on the delinquent return is substantially complete or correct.

4. Forward the referral to your manager via secure e-mail for a digital signature.
5. Send the referral and scanned copy of the return via secure e-mail to:  
*\*Manager EO Classification.*

**Note: EO Converted Returns Only:** Keep secured converted returns package in double unsealed envelopes pre-addressed to the FAST. The converted return package rides with the primary case file to the review function. The review function will process the secured converted returns only after the underlying adverse status change (e.g., revocation) is final.

- (3) EO: If a primary return is under examination and if tax-exempt status continues, address the delinquent return on a Form 886-A with Letter 1744, Change Due to Correction of Operations.

4.70.13.9.6  
(11-22-2023)

**Amended Returns  
Procedures**

- (1) An amended return is a second return filed, after the due date, which changes information submitted on the original return.
- (2) Taxpayers can file amended returns (or missing return information) by fax under the guidelines in IRM 3.12.279.32. See also IRM 4.19.4.3.22, Faxed Signatures - Replies.
- (3) Don't solicit amended tax returns. However, if you receive an amended tax return for a return under examination, inform the taxpayer that the corrections on the amended tax return will be incorporated in the examination report. The amended tax return itself will serve only as a reference document.

**Note: EO:** If a tax-exempt employer appears to be eligible for the IRC 45R refundable credit, inform the employer of its potential eligibility. If the employer wants to claim the credit it must file with the examiner an initial or amended Form 990-T and attach Form 8941. See IRM 4.70.17 for IRC 45R refundable credit procedures.

- (4) **EO:** Solicit amended annual EO information returns if the original return omitted material information or isn't substantially correct.
- Refer to IRM 21.7.7.6.23.1.3, Incomplete Return Item Program (IRI), or IRM 3.11.12.2.12.3 to identify incomplete return items (IRIs).

**Note:** For incomplete returns received at the Service Center, find IRI codes on TXMODA as "IRI-CD> #."

- Instead of amending a return, you can solicit the missing information or schedule to complete the original return.
- Date stamp the missing information upon receipt. Include it in the workpapers. Do not place other markings on the secured document.
- State on Form 5773 whether the secured information completes the return and determine whether reasonable cause exists.
- If the taxpayer doesn't file an amended return as requested (or furnish the missing information as requested), do one of the following:

- Obtain written managerial approval to impose daily delinquency penalties to allow sanctions to secure compliance. Complete Form 5666 for future examination. Issue a written advisory on Letter 3609. Close the return using DC 08 (213) (unless a higher priority disposal code applies). If you don't impose a penalty, document the basis for this decision in the workpapers. Ensure your manager approves of this action.
- Issue Letter 5325, 90-Day Demand Letter for Form 990. Ensure your manager approves of this action.
- Consult with your manager and Area Counsel about proposing a revocation. See Rev. Rul. 59-95, 1959-1 C.B. 627 (failure or inability of exempt organization to comply with requirements of IRC 6033 may result in termination of exempt status).

- Consider the daily penalty under IRC 6652(c)(1)(A)(ii) for the number of days the original return is incomplete or substantially incorrect, subject to a maximum penalty provided by that section.

- (5) If a taxpayer voluntarily files an amended return for a tax year not under examination and no examination is required (or in the case of an original tax return that is under examination, and you agree with the amended return):
- Verify through IDRS research that an original return was filed, posting a TC 150.
  - Verify the amended return has an original authorized signature and date.
  - Verify the amended return box is checked.
  - Verify the return includes the correct name, address, TIN, and tax period.
  - Verify all required schedules and forms are present.
  - Date stamp the return when it is received. Refer to the table below to identify the part of the return reserved for the Campus' Computer Condition Codes. Don't cover a taxpayer entry.

If Form is	The FAST will edit the computer condition code (CCC)
11C	Middle of the page, to the right of the address



730	To the right of the EIN
940	In the middle of the bottom of the page
941	Near the bottom of the form to the right of "You must complete both pages of Form 941 and SIGN it"
943/945	In the middle of the bottom of the page (below the privacy act statement)
944	On the bottom of the return at the end of "You must fill out both pages of the form 944 and sign it" line
990 (2007 and Prior)	In Part I on the dotted line on line 1a
990 (2008 Revision)	In Part 1 on the dotted line on line 4
990-EZ	In Part 1 on the dotted line on line 1
990-PF	In Part I on the dotted line on line 9
990-T	In Part I on the dotted line on line 3
1041	In the middle of the dotted line on line 2a
1041-A	In the Entity section above the Employer identification number and below the OMB No.
1065	In the middle of the dotted line on line 1b
1120	In the middle of the dotted line on line 3
1120-C	In the middle of the dotted line on line 9
1120-POL	In the middle of the dotted line on line 2
1120-S	In the middle of the dotted line on line 3
4720	To the right of the tax year
5227	Part 1 on the dotted line on line 2a
8038	Part II, in the middle of the dotted line on Line 11a
8038-CG	Part II, in the middle of the dotted line on line 9a
8038-G	Part II, in the middle of the dotted line on Line 12
8038-T	Part II, on the dotted line on line 12
8872	On line B, to the right of "final report"

- g. If no date stamp is available, annotate in the middle of the return over the wording, but not over the numbers, "*Received*", the date received, your name and title.
- h. Write across the top margin of the return in red, "Amended Return Secured by TE/GE". Leave sufficient space on the upper right margin of the return for the Campus to stamp the DLN.

- i. Process any payments received within 24 hours. Follow instructions in IRM 4.70.13.9.10, Payment Processing. Replace references to TC 610 with TC 670.
  - j. Determine the application of penalties. See IRM 4.70.13.9.9.
  - k. Prepare Form 3198-A, for each amended return. See item 7 below.
  - l. Assemble the amended return package. See item 6 below.
  - m. Scan the amended return package.
  - n. Mark on the top margin of the scan of the amended return, *“Copy, Do Not Process”*.
  - o. Upload the scan of the amended return to RCCMS. Include in the workpapers of the examined return.
  - p. Submit the amended return to the FAST for processing and posting. See IRM 4.70.13.9.11 for shipping instructions.
  - q. **EO:** If a primary return is under examination, address the amended return on Form 886-A with Letter 1744 Change Due to Correction of Operations, if tax-exempt status continues.
- (6) Assemble the amended return package in the following order:
- Form 3198-A, one for each return. See item 7 below.
  - Copy of the check or payment instrument (cashiers check, etc.).
  - Copy of Form 3244-A.
  - The taxpayer’s written penalty relief request, if any.
- Note:** If a penalty is waived under oral statement or written but unsigned authority, attach Form 886-A explaining the taxpayer’s cause and your penalty determination. For a discussion of reasonable cause and oral statement authority, see IRM 4.70.13.9.9, Reasonable Cause Determination.
- The secured amended return.
- (7) Prepare a separate Form 3198–A, for each amended return. Enter the following on the form:
- Complete the heading of the form.
  - Enter the correct ASED, in the earliest statute date field.
  - If there is a POA for the return, check box for “Send all communications per POA”
  - Notate in the Other Instructions section: “Amended Return for processing by EO FAST”.
  - For annual EO information returns, notate at “Other Instructions” section, “Do Not Assess Inaccurate Return Penalty Under IRC 6652(c)(1)(A)(ii), Reasonable Cause Established.”
  - For tax returns, notate at “Other Instructions” section, *“Assess Delinquency Penalty”* or *“Not Assess Delinquency Penalty- Reasonable Cause Established”*.
- (8) An amended return doesn’t extend the ASED unless it is an income tax return that meets the requirements of IRC 6501(c)(7). See IRM 25.6.1.9.4.2, Amended Return.

4.70.13.9.6.1  
(11-22-2023)

**Amended Return Under Examination**

- (1) If a taxpayer files with you, an amended return for a return you are examining, or you determine an examination is warranted or the amended tax return reports a tax change you don't agree with:
  - a. Date stamp the return when it is received. Don't cover a taxpayer entry.
  - b. If no date stamp is available, annotate in the middle of the return over the wording, but not over the numbers, "Received" the date received, your name and title.
  - c. Write across the top margin of the return in red, "Amended Return Secured by TE/GE EO".
  - d. If the amended return is a claim, see item 2 below.
  - e. Process any payments received within 24 hours. Follow instructions in IRM 4.70.13.9.10, Payment Processing. Replace references to TC 610 with TC 670.
  - f. Don't submit the original amended return to the FAST for processing.
  - g. Scan the amended return, payments, and Form 3244-A.
  - h. Mark on the top margin of the scan of the amended return, "Copy, Do Not Process".
  - i. Submit the scan of the amended return to the FAST.
  - j. Keep the amended return in the case file. For tax returns, the amended return is a supporting document for tax adjustments incorporated in the examination report.
  - k. If the return is not under examination and an examination is warranted, establish examination controls on RCCMS and AIMS using Source Code 50 (Source Code 30 for claims).
  - l. Proceed to conduct your examination.
  - m. For tax returns, incorporate the adjustments from the amended return (such as adjustments to gross income) in the adjustments line of the basic report form (such as on line 1a of Form 4549, Income Tax Examination Changes for income tax).
  - n. If you agree with the amended tax return and there are no other adjustments, close the tax return with RCCMS DC 102, unless a higher priority disposal code applies.
  - o. If you disagree with the amended tax return, reverse the adjustment you incorporated in the basic report form and incorporate your examination adjustments, or both. All adjustments are subject to the taxpayer's agreement. For amended returns that reported a decrease in tax, your disagreement is treated as a disallowance of a claim or abatement request, subject to the taxpayer's agreement. See IRM 4.70.17 for various reports involving claims and abatement requests.
  - p. Complete the closing record on RCCMS.
- (2) If an amended tax return reduces the tax reported on an original return (or claims a IRC 45R refundable credit with Form 8941), treat it as a request for abatement or a claim:
  - a. Update the source code to 30 on RCCMS (manually on Form 5598).
  - b. For claims, input the claim amount on RCCMS (manually on Form 5598). For determining a claim amount, see IRM 4.5.2.3.1.40.3.
  - c. For examination reports required for requests for abatement and claims, see IRM 4.70.17. Follow the procedures in IRM 4.70.17 regarding IRC 45R refundable credits.

- (3) An amended return doesn't extend the ASER unless it is an income tax return that meets the requirements of IRC 6501(c)(7). See IRM 25.6.1.9.4.2, Amended Return.
- (4) To verify whether a return is under examination, check BMFOLI or BMFOLT to verify whether an -L freeze is present (TC 420 / TC 424). Any tax module with an -L freeze requires an examination report that either:
  - Adjusts the tax module to reflect the amended return.
  - Adjusts the tax module per the examiner's computations.
  - Reflects no changes to the tax reported (disallowance of the amended return).

4.70.13.9.6.2  
(11-22-2023)

**EP Processing Amended  
Form 5500 Series  
Returns**

- (1) If you get a hard copy amended Form 5500 series return, process the return as follows:
  - a. Research EMFOLI to verify an original return was filed and shows a TC posting.
  - b. Verify the "amended return/report" box is checked in Part I of the return.
  - c. Make sure the return is signed, dated and properly completed.
  - d. Make sure the return is properly stamped with the date received.
  - e. Prepare Form 3198-A. Notate in the "Other Instructions" section: "Amended Return Secured by TE/GE Employee Plans".

4.70.13.9.6.3  
(11-22-2023)

**EP Processing Amended  
Form 5330 and 990-T  
Returns**

- (1) Taxpayers can amend previously filed Forms 5330 or 990-T by either:
  - a. Filing an amended Form 5330 or Form 990-T and checking block "H" for amended return (Form 990-T does not have a check box to indicate the return as amended), or
  - b. Filing Form 870-EP. See *Employee Plans Examination Exhibits* or an example of a completed Form 870-EP.
- (2) If an amended return is filed with block "H" elected, process the return as provided in IRM 4.70.13.9.5.2.1, Securing Forms 5330, and 990-T Not Yet Due, with the exception that the examiner should write "AMENDED RETURN SECURED BY TE/GE: EMPLOYEE PLANS" on the top of Form.
- (3) If an executed Form 870-EP is received by the examiner:
  - a. Scan the form and save it in the RCCMS Office Document folder using the TE/GE RCCMS Naming Convention.
  - b. The additional tax and IRC 6651 penalties are assessed through the RCCMS Closing Records, Individual/Bus. (1 of 3) tab per the instructions provided in the table under paragraph (1) of IRM 4.70.14.2.1.2.4.9, EP - Preparation of RCCMS Tabs for Agreed Form 5330, and 990-T Exams.

**Caution:** Do **not** enter the revised tax and penalty amount. Enter only the increase for each item.
- (4) Forms 870-EP can be accepted by EEFax or email if taxpayer contact has been made and the case history documents the date of contact and the desire of the taxpayer to submit the consent to assess tax by fax.

**Note:** To document the origin of an email or EEFax, it is necessary to preserve as correspondence the incoming email or EEFax that identifies the origin. Save

the email or EEFax cover page as correspondence in the RCCMS Office Documents folder using the TE/GE RCCMS Naming Convention.

- (5) Process payments received in accordance with IRM 4.70.13.9.5.2, EP Processing Delinquent Forms 5330, and 990-T Received from the Taxpayer.

4.70.13.9.7  
(11-22-2023)  
**Examination  
Determination**

- (1) The primary objective in selecting returns for examination is to promote the highest degree of voluntary compliance on the part of taxpayers. This requires the exercise of professional judgment in selecting sufficient returns of all classes of returns in order to assure all taxpayers of equitable consideration, in utilizing available experience and statistics indicating the probability of substantial error, and in making the most efficient use of examination staffing and other resources. See IRM 1.2.1.5.10, Policy Statement 4-21.
- (2) These procedures are designed to ensure that TE/GE operates in an unbiased and appropriate manner, and to protect against impropriety and undue influence in its compliance programs.
- (3) Reasons for initiating or expanding an examination include:
- A secured delinquent (or amended) return requires an examination under a specific project or program.
  - An issue giving rise to additional tax on a previously filed return is also present on a delinquent or amended return.
  - A taxpayer is liable for a return but fails to file when requested.
  - A taxpayer files an incomplete delinquent return.
  - A taxpayer files a return reasonably believed to be incorrect or false.
  - A claim appears to be inappropriate.
- (4) If you expand the examination to include a secured delinquent or amended return, or to include a tax delinquency for which no return was filed, establish examination controls for the return on RCCMS and AIMS. This is commonly known as a "pick-up". Managerial approval is required for all establishments. SFRs always requires examination controls.

**Note:** An examination is time applied inspecting books and records in order to ascertain the correctness of a return or to determine if a return is required where none has been filed. If you don't examine a delinquent or amended return, no report or closing letter is required for that return. However, EO examiners must address a secured delinquent or amended return in your written advisory Letter 1744, Change Due to Correction of Operations, if the tax-exempt status continues.

- (5) If you pick-up a delinquent or amended return, notify the taxpayer of this decision. Your decision can be confirmed in an IDR.
- a. Establish examination controls on AIMS MF.
  - b. Use push code 020 for AIMS MF establishments.
  - c. Use the amounts from the secured delinquent (or converted) return as starting figures on line 3 of Form 4549 or Form 4549-A.
  - d. Converted returns and NMF returns: Establish examination controls on AIMS NMF.
- (6) For SFRs, use push code 036. There is no push code for amended returns.

**Note: EO:** For organizations not required to file Form 990, establish the return on AIMS NMF, unless the organization voluntarily filed a return which is established on AIMS MF.

**Note: EO:** Form 4720-A (MFT 66) and Form 990-BL (MFT 56) are NMF returns. See IRM 4.70.13.9.8.9.1 and Exhibit 4.70.13-3 for instructions on establishing Form 4720-A (MFT 66).

**Note:** Form 4720-A **isn't** a standard form in the *Electronic Publishing Products Catalog*. A Form 4720 is designated as Form 4720-A if a taxpayer completes Part II-A.

(7) **EO:** If you pick-up returns for examination, use the tracking code in RCCMS for the originally assigned return. The tracking code will be shown on the cover sheet included with the examination case file. Don't change an assigned tracking code. Returns in examination inventory in calendar year 2014 and prior will not have a tracking code, so their related pick-ups will also not have one.

(8) Upload the scanned return to RCCMS for the respective tax module.

(9) **EO:** If a secured delinquent return is a claim for an IRC 45R refundable credit on Form 990-T and Form 8941:

1. Update the source code to 30 on RCCMS (manually on Form 5598).
2. Input the claim amount on RCCMS (manually on Form 5598). The IRC 45R credit claimed will be the claim amount, unless the assessed tax is greater than the credit and there are no payments, thereby constituting a request for abatement. For determining a claim amount, see IRM 4.5.2.3.1.37 and IRM Exhibit 4.5.2-7. See also IRM 4.70.17.
3. For examination reports on claims and requests for abatement, see IRM Exhibit 4.70.14-2.

(10) If you are closing the examination of a delinquent return you've secured:

- EO: Prepare and issue Letter 1744, Change Due to Correction of Operations, assuming the exempt status continues.
- Use DC 52 (214) on the closing record of the delinquent return unless a higher priority disposal code applies.
- 

**Note:** You can't close a delinquent return module on RCCMS until the TC 150 has posted.

(11) If you propose a tax change to a secured delinquent tax return, use DC 03 (102), DC 07 (601), or DC 10 (604), for the closing record of the delinquent tax return, unless a higher priority disposal code applies.

4.70.13.9.7.1  
(11-22-2023)

## EP Form 5500 Series Returns Determined to Be Examined

(1) Follow these procedures when you decide to examine a related, secured Form 5500 series return:

- a. Examiners will use RCCMS to expand the scope of an examination and establish AIMS controls through RCCMS of filed Form 5500 series returns.
- b. Secure BMFOLT for the return to be established.

1. Master File information drops from AIMS after 10 years. If you need to establish a record more than 10 years old, please contact Classification to determine what's required to establish the record.
2. If the EMFOLT indicates the return has been established and surveyed, (TC 424R/420R/421), contact Classification (tege.ep.classification@irs.gov) to reopen the record.

**Note:** Please note the disposal code. Area Manager approval is required to reopen an examined return.

TC424	Examination Request Indicator
TC420	Examination Indicator
TC421	Reversal Examination Indicator

3. Verify that a TC 150 posted for the record to establish on AIMS before proceeding with this establishment process.
4. Note the Statute Date (ASED). You will need to input this date.
- c. Open the activity of the originally established return (lead return) in RCCMS.
- d. From the top line, select Actions, Copy Existing'
- e. When the new Activity opens, Make sure the AIMS box is checked, change the EIN, name and address of the entity (if needed) and complete the following items:

General 1 of 1 Tab:	<ul style="list-style-type: none"> <li>• If the return type is different (5500, 5500-SF, 5500EZ), you can change the return in the Type box. This will also change the Activity Code. If you aren't sure, leave it and see the note below.</li> <li>• Enter the appropriate Tax Period</li> <li>• Change or confirm the Plan Number</li> <li>• The Return Due Date, Received Date, and Statute Date should be completed (from the EMFOLT).</li> <li>• Correct or confirm any entries in the NAICS, Plan Type and Plan Name fields.</li> </ul>
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<p>Codes Tab:</p>	<ul style="list-style-type: none"> <li>• The Project Code should remain the same as the originally assigned return</li> <li>• Source Code should be 40 for a prior/subsequent year or 50 for a related employer or a different Plan number than the Lead return.</li> <li>• Status Code should be 12 for all pickups • Enter “3” as the Return Requisition Code.</li> <li>• Don’t change any other codes in RCCMS.</li> <li>• Save and Close.</li> <li>• To save the activity in the same folder as the Lead Year, accept the default folder and click OK. To save the activity in a different folder than the lead return, select the radio button in front of New Case and name the folder.</li> <li>• If you have additional years to add:             <ol style="list-style-type: none"> <li>1. for a prior or subsequent year, the Lead Return Activity will still be open. Copy Existing again and proceed to input the activity items when the activity opens.</li> <li>2. for a related plan or employer, open the newly created Activity, Select Actions, Copy Existing complete the activity items for the new activity. **The Source Code for all Activities for this EIN/ Plan number will be 50.</li> </ol> </li> </ul>
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- f. Close all activities.
- g. Highlight the newly created activities.
- h. From the top line, Select Action, Establish.
- i. Follow your Group Procedures for approving the establishment and AIMS approval. Once approved by your manager and secretary, the activity will be unlocked. You should have a skeletal account on AIMS.

- j. **General Rule:** If a record is established by Tuesday, it will generally be a full AIMS account the following Monday. If established Wednesday through Friday, it will generally be a full AIMS account on the second Monday.
- k. If you don't know what type of return has been filed (for example, 5500SF vs 5500), you should select the same form as the originally assigned return. The correct activity code will establish on AIMS. If needed, the RCCMS record can be corrected later by selecting the correct form, the activity code will automatically populate and then Select Actions, Update and Sync. This will update the RCCMS record.
- l. The examiner must inform the taxpayer in writing that the return is under examination.

4.70.13.9.7.1.1  
(11-22-2023)

**EP Form 5330 Series  
Returns Determined to  
Be Examined**

- (1) Use this procedure for pickup of filed Form 5330 records that need to be examined. They'll be established on RCCMS and AIMS.

- a. Secure BMFOLT for the return to be established.
- 1. Master File information drops from AIMS after 10 years. If you need to establish a record more than 10 years old, please contact Classification to determine what's required to establish the record.
- 2. If the BMFOLT indicates the return has been established and surveyed, (TC 424R/420R/421), contact Classification (*tege.ep.classification@irs.gov*) to reopen the record.

**Note:** Please note the disposal code. Area Manager approval is required to reopen an examined return.

TC424	Examination Request Indicator
TC420	Examination Indicator
TC421	Reversal Examination Indicator

- 3. Verify that a TC 150 posted for the record to establish on AIMS before proceeding with this establishment process.
- 4. Note the Statute Date (ASED). You will need to input this date.
- b. Open the activity of the originally assigned return (lead return) in RCCMS. From the Codes Tab, notate the following Codes: Project Code, Tracking Code, Project Definer Code and CSN.
- c. From the top line select Actions, New Activity.
- d. When the new Activity opens, validate for establish, ensure the update AIMS box is checked, enter the EIN or SSN and name and address of the entity/individual, and complete the following items: Note: Click on the Name or Address Buttons to get a pop-up box to complete.

General 1 of 1 Tab:	<ul style="list-style-type: none"> <li>• Select 5330 in the Type Box.</li> <li>• Select the Activity Code – 310 for 5330.</li> <li>• Enter the appropriate Tax Period</li> <li>• Enter the plan number for a 5330.</li> <li>• The return due date, received date, and statute date should be completed (from the BMFOLT).</li> </ul>
Codes Tab:	<ul style="list-style-type: none"> <li>• Input the Name Control.</li> <li>• The Project Code should be the same as the originally assigned return.</li> <li>• Source Code should be 50.</li> <li>• For Master File Type Select BMF.</li> <li>• Status Code should be 12.</li> <li>• Enter the Grade of the Case.</li> <li>• “3” should be entered as the Return Requisition Code.</li> <li>• The MFT code should be 76 for 5330.</li> <li>• The Project Definer Code should be the same as the Lead Return.</li> <li>• Enter the CSN from the Lead Return.</li> </ul> <p><b>Note:</b> Click on the CSN Button to get a pop-up box to complete.</p> <ul style="list-style-type: none"> <li>• Save and Close.</li> <li>• Select the radio button in front of New Case and name the folder.</li> <li>• If you have additional years to add, open the newly created Activity, Select Actions, Copy Existing and enter activity items. The Source Code for all Activities for this EIN/Plan number will be 50.</li> <li>• Close all activities.</li> </ul>

- e. Highlight the newly created activity(ies).
- f. From the top line, Select Action, Establish.
- g. Follow your Group Procedures for approving the establishment and AIMS approval. Once approved by your manager and secretary, the activity will be unlocked. You should have a skeletal account on AIMS.

- h. General Rule: If a record is established by Tuesday, it will generally be a full AIMS account the following Monday. If established Wednesday through Friday, it will generally be a full AIMS account on the 2nd Monday.

4.70.13.9.7.1.2  
(11-22-2023)

**EP Form 990-T Series  
Returns Determined to  
be Examined**

- (1) Use this procedure for the pickup of filed 990-T records, with establishment on RCCMS and AIMS.

- a. Secure BMFOLT for the return to be established.
1. Master File information drops from AIMS after 10 years. If you need to establish a record more than 10 years old, please contact Classification to determine what's required to establish the record.
  2. If the BMFOLT indicates the return has been established and surveyed, (TC 424R/420R/421), contact Classification ([tege.ep.classification@irs.gov](mailto:tege.ep.classification@irs.gov)) to reopen the record. (Please note the disposal code. Area Manager approval is required to reopen an examined return.)

TC424	Examination Request Indicator
TC420	Examination Indicator
TC421	Reversal Examination Indicator

3. Verify that a TC 150 posted for the record to establish on AIMS before proceeding with this establishment process.
4. Note the Statute Date (ASED). You will need to input this date.
- b. Open the activity of the originally assigned return (lead return) in RCCMS. From the Codes Tab, notate the following Codes: Project Code, Tracking Code, Project Definer Code and CSN.
- c. From the top line select Actions, New Activity.
- d. When the new Activity opens, validate for establish, ensure the update AIMS box is checked, enter the EIN or SSN and name and address of the entity/individual, and complete the following items:

**Note:** Click on the Name or Address Buttons to get a pop-up box to complete.

General 1 of 1 Tab:	<ul style="list-style-type: none"> <li>• Select 990-T in the Type Box.</li> <li>• Select the Activity Code 311 for 990-T.</li> <li>• Enter the appropriate Tax Period.</li> <li>• Form 990-T does not use a plan number.</li> <li>• The return due date, received date, and statute date should be completed (from the BMFOLT).</li> </ul>
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<p>Codes Tab:</p>	<ul style="list-style-type: none"> <li>• Input the Name Control.</li> <li>• The Project Code should be the same as the originally assigned return.</li> <li>• Source Code should be 50.</li> <li>• For Master File Type Select BMF.</li> <li>• Status Code should be 12.</li> <li>• Enter the Grade of the Case.</li> <li>• "3" should be entered as the Return Requisition Code.</li> <li>• The MFT code should be 34 for 990-T.</li> <li>• The Project Definer Code should be the same as the Lead Return.</li> <li>• Enter the CSN from the Lead Return.</li> </ul> <p><b>Note:</b> Click on the CSN Button to get a pop-up box to complete.)</p> <ul style="list-style-type: none"> <li>• Save and Close.</li> <li>• Select the radio button in front of New Case and name the folder.</li> <li>• If you have additional years to add, open the newly created Activity, Select Actions, Copy Existing and enter the activity items.</li> </ul>
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- e. Close all activities.
- f. Highlight the newly created activity(ies).
- g. From the top line, Select Action, Establish.
- h. Follow your Group Procedures for approving the establishment and AIMS approval. Once approved by your manager and secretary, the activity will be unlocked. You should have a skeletal account on AIMS.
- i. General Rule: If a record is established by Tuesday, it will generally be a full AIMS account the following Monday. If established Wednesday through Friday, it will generally be a full AIMS account on the 2nd Monday.

4.70.13.9.7.1.3  
(11-22-2023)  
**EP Non-Master File  
(NRU) MFT 74 Pickup  
Procedure**

- (1) Use this procedure for all pickups of Non-Master File records, MFT 74, where no return has been filed. These are called Non-Return Units (NRU). These returns will only be established on RCCMS. We will no longer use AIMS Non-master File (NMF) for MFT 74 Non-Return Unit cases. The groups will follow the steps to create and establish the RCCMS record for the pick-ups of IRC 403(b) plans, IRC 457(b) plans, IRC 457(f) plans, IRC 401(a) Governmental

Plans, Simplified Employee Pensions (SEP IRA), Salary Reduction Simplified Employee Pensions (SARSEP IRA), and Simple Retirement Accounts (Simple IRA).

- a. Open the activity of the originally established return (lead return).
- b. From the top line select Actions, Copy Existing
- c. When the new Activity opens, make sure Update AIMS box is NOT checked and complete the following items:

General 1 of 1 Tab:	<ul style="list-style-type: none"><li>• Don't change the entry in the Type Field – this changes the Activity Code.</li><li>• Enter the appropriate Tax Period.</li><li>• Confirm or change the plan number.</li><li>• The statute date should be completed.</li><li>• Any entries made in the NAICS, Plan Type and Plan Name fields should be corrected or confirmed.</li></ul>
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Codes Tab:	<ul style="list-style-type: none"> <li>• The Project Code should remain the same as the originally assigned return.</li> <li>• Source Code should be 40 for a prior/subsequent year or 50 for a different EIN or Plan number.</li> <li>• Status Code should be 12 for Related Return Pickups.</li> <li>• "3" should be entered as the Return Requisition Code.</li> <li>• Don't change any other codes in RCCMS.</li> <li>• Save and Close.</li> <li>• If you want the Activity in the same folder as the Lead Year Return, accept the default folder and click OK. To save the activity in a different folder than the Lead Return, select the radio button in front of New Case and name the new folder.</li> <li>• If you have additional years to add (1) for a Prior subsequent year, go to the Lead Activity (already open), copy existing and enter the activity items. (2) for related plan or Employer, open the newly created Activity, copy existing and enter the activity items for the related case. The Source Code for all Activities for this EIN/Plan number will be 50.</li> </ul>
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- d. Close all Activities.
- e. Highlight the newly created activity(ies). From the top line, Select Action, Establish.
- f. Contact your manager to approve the update for the case on RCCMS. Once approved by your manager/admin, the activity will be unlocked. (Your RCCMS only case record is now complete and ready for use.)



4.70.13.9.7.1.4  
(11-22-2023)

**EP Non-Master File  
(NRU) MFT 99 Pickup  
Procedures**

- (1) MFT 99 is normally used for Non-Fileers. The Lead record is established without a plan number and is intended as a placeholder. Once the return is secured and posted, or a Substitute for Return posted, the MFT 99 record will be converted to a Master File Record. Refer to IRM 4.70.13.9.7.1.5, EP NRU Conversion to Master File Procedure. Because the MFT 99 record is a placeholder, there should generally be no related records established under MFT 99 until the return or an SFR is secured and posted. Exception: SEP Training Cases established in 2020 using MFT 99. Prior and Subsequent Years can be established for these records.
- (2) Use this procedure for all pickups of Non-Master File records, MFT 99. The groups will complete the steps to establish on RCCMS only. We will no longer use AIMS Non-master File (NMF) for MFT 99 Non-Return Unit cases.
  - a. Open the activity of the originally established return (lead return).
  - b. From the top line select Actions, Copy Existing.
  - c. When the new Activity opens, ensure the Update AIMS box is NOT checked, and complete the following items:

General 1 of 1 Tab:	<ul style="list-style-type: none"> <li>• Enter the appropriate Tax Period.</li> <li>• The statute date should be completed.</li> </ul>
Codes Tab:	<ul style="list-style-type: none"> <li>• The Project Code should remain the same as the lead return.</li> <li>• Source Code should be 40.</li> <li>• Status Code should be 12 for Related Return Pickups.</li> <li>• "3" should be entered as the Return Requisition Code.</li> <li>• Don't change any other codes in RCCMS.</li> </ul>

- d. Save and Close.
- e. If you want the Activity in the same folder as the Lead Year Return, accept the default folder and click OK. To save the activity in a different folder than the Lead Return, select the radio button in front of New Case and name the new folder.
- f. If you have additional years to add, go back to the Lead Activity (already open), copy existing and enter activity codes.
- g. Close all Activities.
- h. Highlight the newly created activities.
- i. From the top line, Select Action, Establish.
- j. Contact your manager to approve the RCCMS update for the case. Once approved by your manager/admin, the activity will be unlocked. (Your RCCMS only case record is now complete and ready for use.)

## 4.70.13.9.7.1.5

(11-22-2023)

### EP NRU Conversion to Master File Procedure

- (1) Use this procedure to convert a Non-Return Unit RCCMS record to a master file record. This is most common when a non-File retirement plan was assigned and later the required return or a Substitute for Return is posted. It could also be used when it is determined that the Taxpayer has filed under a different EIN or what was assigned as an NRU record (SEP, SIMPLE, SARSEP) was for a plan where a Form 5500 was previously filed.
- (2) The manager should send the following to the EP Classification Mailbox with the Subject Line "NRU Conversion to MF":
  - a. EMFOLT of the Master File Record
  - b. AMDISA print of the NRU
  - c. 3U3.Related or Subsequent Year Form 5500 Request IF related returns are also needed.
- (3) The RCCMS record should be transferred from the groups Manager's Inventory to EP Classification (400, 12112, 7693, Don't check the Update AIMS box, status should be blank).
- (4) If the record can be converted, the record will be returned with the Case File and Office Documents.
- (5) If the record is an MFT 74 record, it's possible that Classification won't convert the record. Classification will let the manager know if that is the case.

## 4.70.13.9.7.1.6

(11-22-2023)

### EP Establishment 5500 EZ Not Required to File Procedure

- (1) Use this procedure for all pickups of Subsequent, Prior or Related Forms 5500-EZ that aren't required to file. These pickups will also be handled as Non-Master File MFT 74 Non-Return unit cases.
  - a. Open the activity of the originally established return (lead return).
  - b. When the new Activity opens, ensure AIMS box is NOT checked, change the EIN and name and address of the entity (if necessary), and complete the following items:

General 1 of 1 Tab	<ul style="list-style-type: none"> <li>• Type Field – IRC 403b/457/SEP/SIMPLE. (This description will eventually be changed to indicate it is for a Plan that is not required to file a return).</li> <li>• Activity Code 370 should be available in the Activity Code Box.</li> <li>• Enter the appropriate Tax Period.</li> <li>• Confirm or change the plan number.</li> <li>• The statute date should be completed.</li> <li>• Any entries made in the NAICS, Plan Type and Plan Name fields should be corrected or confirmed.</li> </ul>
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Codes Tab	<ul style="list-style-type: none"> <li>• Project Code should remain the same as the originally assigned return.</li> <li>• Source Code should be 40 for a prior/subsequent year or 50 for a different EIN or Plan number.</li> <li>• Status Code should be 12 for Related Return Pickups.</li> <li>• "3" should be entered as the Return Requisition Code. Do not change any other codes in RCCMS.</li> <li>• Save and Close.</li> <li>• If you want the Activity in the same folder as the Lead Year Return, accept the default folder and click OK. To save the activity in a different folder than the Lead Return, select the radio button in front of New Case and name the new folder.</li> <li>• If you have additional years to add:             <ol style="list-style-type: none"> <li>1. for a Prior subsequent year, go to the Lead Activity (already open), copy existing and enter activity items.</li> <li>2. for related plan or Employer, open the newly created Activity, copy existing and enter activity items. The Source Code for all Activities for this EIN/Plan number will be 50.</li> </ol> </li> </ul>
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- c. Close all Activities.
- d. Highlight the newly created activity (ies).
- e. From the top line, Select Action, Establish.
- f. Contact your manager to approve the update for the case in RCCMS. Once approved by your manager / admin, the activity will be unlocked. (Your RCCMS only case record is now complete and ready for use.)

4.70.13.9.7.2  
(11-22-2023)

**EO: Refusal to File an  
EO Tax Return**

- (1) In the case of Forms 4720, prepare the SFR in the name of the organization on AIMS MF (MFT 50).
- (2) In the case of Forms 4720-A, prepare the SFR for the manager, disqualified person, self-dealer, donor or donor advisor. Form 4720-A is established on NMF (MFT 66), with activity code 334 for EINs, or activity code 400 for SSNs.

**Reminder:** Form 4720-A isn't a standard form in the Electronic Publishing Products Catalog. A Form 4720 is designated as Form 4720-A (MFT 66) if a taxpayer completes Part II-A.

4.70.13.9.7.3  
(11-22-2023)

**EO: Refusal to File  
Required Annual EO  
Information Return**

- (3) If the organization is not required to file the tax return, see IRM 4.70.13.9.1 para (4) for processing of Form 4844 with the FAST.

- (1) An organization that fails to file a required annual EO information return for three consecutive years will automatically be revoked.
- (2) Ascertain the reason the organization has not filed a required annual EO information return.
- (3) If the organization files a complete and substantially correct primary return after you request it, take the following actions:
  - a. If a TC 150 posted because of a previously filed Form 990-N, see IRM 4.70.13.9.8.4, Original Return Received after TC 150 posts.
  - b. Otherwise, follow delinquent return procedures in IRM 4.70.13.9.5.
  - c. If AIMS NMF examination controls were previously established for the primary return that was not filed, delete the NMF examination record after you have fully established a counterpart AIMS Master File examination record for the return. A full AIMS Master File establishment means a TC 150 posted. See IRM 4.70.14.4.9.1, Deleting AIMS Accounts.
  - d. Prepare Letter 1744, Change Due to Correction of Operations, for the tax years that include the secured delinquent primary return. See IRM 4.70.14.4.3.1, TE/GE Change Due to Correction of Operations.
  - e. Complete Form 5666 for a future examination if a Form 990 is not filed.
  - f. Close the return using DC 52 (214) on RCCMS Closing Record, unless a higher priority disposal code applies.
- (4) If the organization is actually not required to file a Form 990:
  - 1. Prepare and issue a no change letter. See IRM 4.70.14, Generating a Closing Letter.
  - 2. Prepare Form 2363-A to remove the filing requirement. See instructions in IRM 25.7.1.
  - 3. Close the Form 990 using DC 02 (107) or DC 52 (214), whichever applies, unless a higher priority disposal code applies.

**Reminder:** If an organization claims to be a church exempt from filing Form 990, suspend the examination and refer to IRC 7611 procedures.

- (5) If an EO is recognized as exempt from filing Form 990 by ruling or determination letter (as indicated at the heading of the letter), but no longer qualifies for a filing exemption, issue a report proposing to remove the exemption from a Form 990 filing requirement, subject to appeal.
  - 1. Issue a 30-day letter and report to the organization, affording the organization the right to appeal your determination.
  - 2. Request assistance from the Mandatory Review mailbox at *\*TEGE EO Review Staff* for preparing a 30-day letter.
  - 3. The report will consist of Form 4621-A Form 886-A and Form 6018 (line 10 checked).
  - 4. The organization will have 30 days to agree or protest your proposal.
  - 5. Issue a rebuttal Letter 5918 if a written protest doesn't change your position.

6. A filing requirement exemption issue is not subject to declaratory judgment. The 30-day letter becomes final as to the filing exemption issue if the organization fails to reply.
7. Before closing the case, prepare Form 2363-A to reflect a Form 990 filing requirement.
8. Submit Form 2363-A to the FAST for processing if the organization either agrees or fails to reply.
9. If the organization agrees or fails to reply, solicit Form 990.
10. If the organization files a Form 990 as requested, go to IRM 4.70.13.9.7.3 (3) above.
11. If the organization refuses or can't file a return (no valid protest received), go to Paragraph (6) below for your next course of action.
12. If the organization protests your proposal for Appeals consideration, place Form 2363-A and Form 5666 in the case file for future processing. Form 5666 is for follow-up examination in case the organization doesn't file the return as required.
13. Close the protested case to Mandatory Review using DC 07 (601) for forwarding to Appeals.
14. If Appeals sends the case back to you to secure Form 990 returns, follow the instructions in IRM 4.70.13.9.7.3 (3) or IRM 4.70.13.9.7.3 (6), whichever applies.

- (6) If the organization refuses or can't file a required return, do one of the following:

Obtain written managerial approval to impose daily delinquency penalties to allow sanctions to secure compliance. Complete Form 5666 for future examination. Issue a Letter 1744, Change Due to Correction of Operations. Close the return using DC 52 (214) (unless a higher priority disposal code applies). If you don't impose a penalty, document the basis for this decision in the workpapers. Ensure your manager approves of this action. If you previously issued a report in IRM 4.70.13.9.7.3 (5) above, include a paragraph referring to that separate report and the outcome.

Issue Letter 5325, 90-Day Demand Letter for Form 990. Ensure your manager approves of this action.

Consult with your manager and Area Counsel about proposing a revocation. See Rev. Rul. 59-95 1959-1 C.B. 627 (failure or inability of exempt organization to comply with requirements of IRC 6033 may result in termination of exempt status).

1. Consider a penalty on the organization under IRC 6652(c)(1)(A), IRC 6652(c)(2)(A), or IRC 6652(c)(2)(C).
  2. Consider a penalty on the organization managers under IRC 6652(c)(1)(B) or IRC 6652(c)(2)(b) for each day the failure continues after the expiration of the 90-day period in the second bullet above.
- (7) Organizations are also required to file a final return if they have terminated their existence, unless they are excepted from filing a Form 990. See IRM 4.70.13.9.4.2.

4.70.13.9.8  
(11-22-2023)  
**Substitute for Returns  
Procedures**

- (1) A substitute for return (SFR) is prepared by the examiner and is used to establish an account for a taxpayer who refuses to file, or is unable to file, a required tax return.
- (2) If a taxpayer refuses or is unable to file a required tax return, establish examination controls for the required return, if not already established when you were assigned the case.
  - a. Establish NMF returns, such as Form 4720-A (MFT 66) on AIMS NMF and RCCMS (leaving the AIMS block unchecked in RCCMS).
  - b. Establish Master File returns on AIMS Master File and RCCMS.
  - c. If AIMS NMF examination controls were previously established for a non-filed Master File return, delete the NMF examination record after you have fully established the AIMS Master File examination record for the same return. A full AIMS Master File establishment means a TC 150 posted. See IRM 4.70.14.4.8.1, Deleting AIMS Accounts.
  - d. Use Push Code 036 for AIMS Master File establishments, which establishes a TC 150 within two cycles of input or within 10 days.
  - e. Use Source Code 43.
  - f. Use ASED Alpha Code "EE".

**Note:** Initially, use ASED Alpha Code "EE", No Return Filed, when establishing examination controls for a SFR, even if you are establishing a related EO tax return with an actual statute date based on the filing of a primary return of record. In the case of such related tax returns, be sure to then update the ASED in RCCMS (manually on Form 5595) to reflect the correct statute date. Such related tax returns include Forms 990-T, 1120- POL, 4720, 4720-A, 1120, and 1041.

**Note:** You can't prepare an SFR if Criminal Investigation (CI) controls are present. See IRM 4.70.9.3.2.

- (3) The DLN for an SFR will be shown as XX-999-999-999-XX-X.
- (4) Don't change an assigned tracking code.
- (5) Returns in examination inventory in calendar year 2014 and prior will not have a tracking code, so their related pick-ups will also not have one.
- (6) Create the dummy/SFR. Complete the first page of a blank tax return for the appropriate year. Do not attach additional schedules. SFRs should contain entity information. only as follows:
  - Taxpayer's name.
  - Address.
  - Taxpayer identification number.
  - Taxable period.
  - Annotate in red on the top margin of the SFR, "*Substitute for Return Prepared by TE/GE*".

**Note:** Do not include dollar amounts or other tax information on the SFR. The Closing Unit will return the SFR case file to the originator for correction.

- (7) The SFR serves as a working return. Make a “working return assembly” as follows, top to bottom:
- Current AMDISA print.
  - Copy of Form 3244-A, if any
  - Copy of the check or payment document.
  - Taxpayer’s written penalty relief request, folded so as not to block the SFR entirely.
  - The SFR.
  - Form 2848, Power of Attorney and Declaration of Representative.
  - Any other documents stapled to the last page facing the rear in accordance with IRM 4.70.14.4.2.1.1., Paper Case File Assembly, if applicable.
- (8) Prepare the electronic RCCMS Form 3198-A Special Handling checksheet in the RCCMS compliance activity.
- a. If there is a POA for the return, check the box for “Send All Communications Per POA”.
  - b. Include the date a Form 2363 or 2363-A was submitted if the filing requirement or address was updated.
  - c. Include the correct ASSED, listed in the earliest statute date field.
- Caution:** To ensure the FTP penalty is waived for reasonable cause, enter a TC 270 for .00 in the transaction code field on the Individual/Bus. (1 of 3) tab in RCCMS. Secure the taxpayer’s written penalty relief request on the basis of reasonable cause or prepare your explanation of reasonable cause on Form 886-A.
- Note:** If you recommend an FTP penalty, you must include the FTP in the proposed notice of deficiency (RAR).
- (9) Prepare the examination report. See Exhibit IRM 4.70.14-3, Reports and Closing Letters for Change Cases, for examination reports. Include your determination of FTP penalties in the examination report. After you issue your examination report, construct a “Valid Return - SFR Package”.

4.70.13.9.8.1  
(11-22-2023)

**A Valid Return – The  
SFR Package**

- (1) A “Valid Return” for purposes of IRC 6020(b) is a file copy of the RAR with Form 13496 as a cover. Assemble the package in the following order:
- Form 13496, IRC Section 6020(b) Certification, one for each tax year. (Don’t send this form to the taxpayer).
  - Form 13496-A, IRC Section 6020(b) Certification for Employment Tax Returns, one for each tax year. (Don’t send this form to the taxpayer.) (ET cases only.)
  - The original signed waiver and acceptance form for agreed cases.
  - File copy of Form 4549 (or equivalent basic report form for taxes other than income tax).
  - File copy of Form 886-A.
  - File copy of supporting schedules, spreadsheets, or exhibits, if any.
  - Current transcripts no more than 30 days old.

**Note:** If there is a tax deficiency and you recommend an FTP penalty, include the FTP in the proposed notice of deficiency.



- (2) Form 13496:
  - Is for **internal use only** (don't send it to the taxpayer).
  - Establishes that IRC 6020(b) criteria are met in order that the failure to pay penalty under IRC 6651(a)(2) will be sustained in court.
  - Is prepared, one for each substitute tax return, if you will propose an FTP penalty.
  - May not have a signature that precedes the date affixed to the 30-day letter.
  - May not be prepared or dated after the date of the 90-day letter.
- (3) If you revise a report that increases the total tax liability, prepare a re- certification on another Form 13496 dated on or after the same day as the revised report.
- (4) Include the following transcripts in the workpapers. The transcripts can't be more than thirty days old:
  - INOLES.
  - IMFOLT/TXMODA (IMF) or BMFOLT/TXMODA (BMF).
- (5) Apply the following examination results depending on how the taxpayer responds to your proposed tax change:
  - For agreed SFR tax cases, see IRM 4.70.13.9.8.2, Agreed SFR Tax Cases.
  - For unagreed SFR tax cases, see IRM 4.70.13.9.8.3, Unagreed SFR Tax Cases.
  - If the taxpayer filed a delinquent or converted return and you accept the return as filed, follow the procedure in IRM 4.70.13.9.8.2, Agreed SFR Tax Cases. See also IRM 4.70.13.9.8.4(1).
  - If the taxpayer filed a delinquent or converted return that you further adjust, and the taxpayer doesn't agree, follow the procedure in IRM 4.70.13.9.8.3, Unagreed SFR Tax Cases.

4.70.13.9.8.2  
(11-22-2023)  
**Agreed SFR Tax Cases**

- (1) If you issued your report of examination (30-day letter and RAR), and the taxpayer replies by signing the appropriate agreement form:
  - Stamp or write the received date on the signed waiver form.
  - Scan or copy the signed waiver form and upload the form to RCCMS.
  - Associate the signed waiver form with the SFR package in IRM 4.70.13.9.8.1, A Valid Return - The SFR Package.

**Note:** In the case of two-tier Chapter 42 excise taxes, the examination change is not agreed until the taxpayer makes full correction and signs Form 870-E.
- (2) If you receive a payment, follow the remittance instructions in IRM 4.70.14.3, Payment Processing; however, on Form 3244-A use:
  - TC 640, Advance Payment of Deficiency, in lieu of TC 610, Remittance with Return, for payments received with a signed agreement form.
  - TC 670, Subsequent Payment, in lieu of TC 610 for payments received after the TC 150 posting that aren't connected with a signed agreement form.

(3) Issue an agreed tax change closing letter to the taxpayer:

- Letter 2511, for agreed change to any type of income tax, including UBIT.
- Letter 2511, for agreed change to Chapter 42 excise tax or miscellaneous excise tax.
- Letter 3382, for agreed change to employment tax.

**Note:** For specific letters and reports for agreed tax changes, see IRM Exhibit 4.70.14-3, Reports and Closing Letters for Change Cases.

(4) Close the agreed tax change to the Closing Unit using DC 03 (102) on the RCCMS closing record, unless a higher priority disposal code applies. See IRM 4.70.14.4.6, Completing the Case Closing Record.

**Caution:** To ensure the failure to pay is waived due to reasonable cause, enter a TC 270 for .00 in the transaction code field on the “Individual/Bus. (1 of 3)” tab in RCCMS. Secure the taxpayer’s written penalty relief request for a reasonable cause determination, or prepare your explanation of reasonable cause on Form 886-A.

4.70.13.9.8.3  
(11-22-2023)  
**Unagreed SFR Tax Cases**

(1) If you’ve issued your report of examination (30-day letter and RAR), and the taxpayer disagrees, close the case to Mandatory Review, except for:

- Unagreed without protest employment tax cases (other than worker classification). The 30-day letter becomes final. Close to the Closing Unit for assessment.
- Unagreed without protest gaming excise tax cases. The 30-day letter becomes final. Close to the Closing Unit for assessment.

(2) Close the case using DC 07 (601) or DC 10 (604).

(3) Mandatory Review or Appeals will issue a 90-day statutory notice of deficiency.

4.70.13.9.8.4  
(11-22-2023)  
**Original Return Received after TC 150 Posts**

(1) If you secure a delinquent return after a TC 150 has posted, process the secured return like an amended return under examination at IRM 4.70.13.9.8.1, A Valid Return - The SFR Package.

**Note:** This situation occurs after you’ve established an SFR (or the organization filed a Form 990-N) posting a TC 150 to the module, yet the taxpayer nevertheless voluntarily files a delinquent return with you. In the case of tax returns, you will treat the tax reported on the original delinquent return as an examined tax change (TC 300), similar to amended returns. You would close the delinquent tax return with DC 03 (102) if the tax is agreed, or DC 07 (601) or 10 (604) if the tax is unagreed.

(2) If you secure a delinquent return after a TC 150 has posted for an SFR (or a Form 990-N) do the following:

1. Stamp the received date on the return when received. Don’t cover a taxpayer entry. Refer to Exhibit 4.70.13-5, EO Computer Code Locations, to identify the part of the return reserved for the Campus’ computer condition codes.

2. If no date stamp is available, annotate in the middle of the return over the wording, but not over the numbers, "Received", the date received, your name and title.
  3. Annotate across the top margin of the return in red, "Delinquent Return Secured by TE/GE". Leave sufficient space on the right half of the top margin to allow the Campus to stamp a document locator number (DLN).
  4. Secured Converted Returns Only: Annotate across the top margin of the return in red, "Form 990 Converted to Form [1120 or 1041 or 990- PF]".
  5. If you receive a payment, follow payment processing instructions in IRM 4.70.13.9.10. Replace references to TC 610 with TC 670.
  6. Don't submit the original return to the FAST for processing.
  7. Prepare separate Forms 13133 and 3198-A for each return in accordance with IRM 4.70.13.9.5.5, and include these forms with a copy of the delinquent return you will be sending to the FAST.
  8. If you don't want to impose a delinquency penalty, indicate so on Forms 13133 and 3198-A in accordance with IRM 4.70.13.9.5.5(9) and IRM 4.70.13.9.5.5(9), Processing Delinquent Employment Tax Returns.
  9. Scan or copy the original return package, which includes the original return, copy of payments, Forms 3244-A, Form 13133 and Form 3198-A.
  10. Mark on the top margin of the copy, "Copy".
  11. Upload the scanned package to RCCMS.
  12. Update the statute in RCCMS to reflect the received date of the return (unless the return has an ASED that depends on the filing of a primary return).
  13. Submit the copy of the secured delinquent return package to the FAST.
  14. Secured Converted Returns Only: Place the copy of converted return package envelope (unsealed) in or with the Form 990 case file folder. The reviewer will submit the envelope to the FAST if the underlying adverse status change is sustained.
  15. Keep the original delinquent (or converted) return in their respective case file as a supporting document for the adjustments incorporated in the examination report.
- (3) If the TC 150 was based on an SFR, the FAST will post a TC 971 AC 282 upon receipt of the return copy from the examiner. Posting of the TC 971 AC 282 on Master File does the following:
- Updates Master File to show that Examination secured a delinquent return.
  - Causes a TC 976 to post to Master File.
  - Sets the Assessment Statute Expiration Date (ASED).
  - Avoids setting the duplicate return freeze on Master File.
  - Avoids generating an AIMS weekly update.
  - Allows a DC 06 (208) for the secured delinquent Form 990.
- (4) If the TC 150 was based on a filed Form 990-N, FAST will post a TC 971 AC 013 upon receipt of the delinquent return copy from the examiner. Posting of the TC 971 AC 013 on Master File does the following:
- Updates Master File to show that Examination secured a delinquent return.
  - Cause a TC 976 to post to Master File.
  - Sets the duplicate return freeze (-A) on Master File.
  - Allows a DC 06 (208) for the secured delinquent Form 990.

**Note:** The Closing Unit will remove the duplicate return freeze when the case is closed by the Closing Unit.

- (5) The FAST will image all Forms 990, 990-EZ, 990-PF, 990-BL, 990-T, and 4720 for inclusion in the Online SEIN database. The FAST will not make any adjustments to what is already on file on IDRS.
- (6) Proceed to conduct your examination. Refer to IRM 4.70.14.2.1.1 for preparing the appropriate examination report for tax deficiencies:
  1. Make reference to the secured delinquent tax return in the narrative of the report.
  2. Incorporate the taxable amount per delinquent tax return as an examination adjustment, includible on any row of line 1 of Form 4549 in the case of income taxes.
  3. If you don't agree with the taxable amount reported on the delinquent tax return, add adjustments, or reverse the portion of the taxable amount you don't agree with, or do a combination of both, on any row of line 1 of Form 4549 in the case of income taxes.
  4. Enter zero in the rows corresponding to "taxable amount per return or as previously adjusted" (e.g., line 3 of Form 4549) and "total tax per return or as previously adjusted" (e.g. line 12 of Form 4549).
  5. Issue this report with a 30-day letter to the taxpayer.
- (7) Complete the closing record on RCCMS, but don't complete the delinquent return indicator or delinquent return amount fields. For instructions on completing the RCCMS Closing Record, see IRM 4.70.14.4.5.

4.70.13.9.8.4.1  
(11-22-2023)

**Processing Delinquent  
Employment Tax  
Returns After TC 150  
SFR Posts**

- (1) When delinquent returns are secured and the SFR TC 150 has already posted, the examiner will need to determine the accuracy of the submitted returns by examining them.
- (2) If the Examiner accepts the delinquent return without making additional adjustments, prepare:
  - Form 2504 series, as applicable, Agreement to Assessment and Collection of Additional Tax (taxpayer signature is not necessary because the report matches the amounts reflected on the signed delinquent return);).
  - Form 4666, Summary of Employment Tax Examination; Examination.
  - Form 4668, Employment Tax Examination Changes Report, to reflect the amounts shown on the delinquent return.
  - Prepare Form 2275 with BMFOLR as the return document and attach a copy of the signed delinquent return.
  - The examination will be closed using normal closing procedures.

**Note:** On Form 3198-A, indicate "Case is agreed based on taxpayer signature on delinquent return".
- (3) If the Examiner does not accept the delinquent return without making additional adjustments then the return must be processed as a partial assessment in RCCMS unless the return shows no tax due. If the return shows no tax due see paragraph (4) below since partial assessment procedures are not required. For returns showing a tax due amount the following partial assessment procedures are required.

1. Prepare reports matching the submitted delinquent returns and send them along with copies of the delinquent returns, RCCMS Closing Record, and 3198-A to the Field Manager for processing of the partial assessment. The Field Manager will forward the partial assessment package to the GE Closing Unit.
  2. Complete partial assessment in RCCMS.
  3. Once the corrected figures are determined, prepare a report for any adjustments not reported on the delinquent returns. The case will then be processed using regular agreed and unagreed procedures depending on whether or not the taxpayer signs the report.
  4. Prepare Form 3198-A. In the Other Instructions section, enter "SFR TC 150 Posted - Process Delinquent Return(s) as Final Closures".
- (4) If the taxpayer submits a delinquent return to the Examiner showing no tax due then the secured return will be incorporated into the final exam report. Also, even though the delinquent return is not being processed, the receipt of a valid return does start the running of the statute of limitations. Update the "Return Received" date to the date the delinquent return was received and update the "Statute Date" in RCCMS.
- (5) Master File must be updated to show a delinquent return was secured after an SFR TC 150 was posted. Form 3177, Notice of Action for Entry on Master File, must be completed as follows:
- a. Enter an "X" in the box marked "Other" at the bottom of the form.
  - b. Enter "TC 971 AC 013 Return Received Date MM/DD/YYYY" on the line next to the "Other" box.
  - c. Forward Form 3177, Notice of Action for Entry on Master File, to the FAST Unit via encrypted E-mail (*\*TEGE FAST*).

4.70.13.9.8.5  
(11-22-2023)  
**Correcting Erroneous  
Push Code 021  
Establishments**

- (1) When generating an SFR on AIMS, you must use push code 036. Don't use push code 021.
- (2) If you accidentally use push code 021, wait 30 days from the creation date of the AIMS skeletal record on the AMDISA to perform the steps in the table below. Don't delete the skeletal record and don't prepare Form 10904.

STEP	INSTRUCTION
1.	Complete Form 5597. Use the same primary business code (PBC), secondary business code (SBC), employee group code (EGC), and status code shown on the skeletal AIMS record.
2.	Sign Form 5597. E-signatures are acceptable.
3.	Your manager must sign Form 5597. E-signatures are acceptable.
4.	The IDRS clerk or secretary will input push code AM424. The SFR will post to the BMF one to two weeks after input.

7.	On RCCMS, uncheck the "Update AIMS" check box; update the push code to 036; and select "Validate for Update". Save and close the activity.
8.	Right-click the activity and select "Request Update".
9.	Send / Receive on RCCMS

- (3) Once the AIMS record is fully established with a TC 150 you can use RCCMS to update AIMS.

4.70.13.9.8.6  
(11-22-2023)

**EP Processing Form  
5500 Series Substitute  
for Returns**

- (1) If a taxpayer refuses to file a Form 5500 series return, a "SPF" must be prepared. To prepare a SFR complete the information below on the Form 5500, Form 5500-SF or Form 5500-EZ (you can print hard copies of the 5500 forms from the DOL website: [www.efast.dol.gov](http://www.efast.dol.gov)) and mail the 5500 to Classification for posting to the EPMF. Follow these steps:

- a. Complete the following information on a hard copy Form 5500 series return: Plan Sponsor Name, Sponsor Address, Sponsor EIN, Plan Year Ending, Plan Number and Plan Name.
- b. Prepare Form 3198-A. Notate in the "Other Instructions" section: "Substitute for Return Secured by TE/GE Employee Plans".
- c. Attach only the Form 5500, Form 5500-SF or Form 5500-EZ to the Form 3198-A and email it to Classification at *\*TEGE-CPC-Classification*. Keep all other case file information (IDRS research, examination work papers, etc.) with you.
- d. Save the SFR email that was sent to Classification as an Adobe PDF and Upload the electronic record into the RCCMS case file.

**Note:** Saving email messages as a "Save as Adobe PDF" creates a pdf file with embedded files that is not encrypted. If you print the message, the attachments are not saved in the record.

- (2) If it is decided to examine the SFR Form 5500:
- a. Research IDRS to verify that the Form 5500 series return has posted on the EPMF.
  - b. Prepare the Related and Subsequent Year Form 5500 Request form and forward it to your manager for approval.
  - c. Verify that you have correctly completed all of the information (for example, special project code, condition code, group number, etc.) on the form or it will be returned to the group. Note in your request that the return has posted to the EPMF and list the date the taxpayer filed the return or you sent it to Classification.
  - d. The group manager or designee will email the approved form to Classification.
  - e. Classification will acknowledge receipt of the request for the return (normally within 5 business days).
  - f. Classification will mark the return on RICS, establish the return on AIMS and RCCMS and update these systems to the group when the return posts to the EPMF.



**Note:** The return is established by Classification - the group should not attempt to establish the return on AIMS or RCCMS.

- g. Classification will inform the examiner and group manager (normally within 10 business days) that the record has been assigned to the group on AIMS and RCCMS.

**Note:** AIMS will be in status 10 when there is a full AIMS account.

- h. The examiner will update the status of the case to status 12 through RCCMS.
- i. The examiner must inform the taxpayer in writing that the return is under examination.

4.70.13.9.8.7  
(11-22-2023)

**EP Processing Form  
5330 or 990-T Substitute  
for Return**

- (1) When the taxpayer refuses to file a Form 5330 or 990-T after receiving a notice that a return is due, establish an SFR. Form 5330 and 990-T Substitute for Returns can now be established electronically using RCCMS. It is no longer necessary to mail the paper substitute for return package to the Ogden Service Center. The SFR return(s) will be established using RCCMS after entity module verification.
- (2) Perform IDRS research to verify the BMF (Business Master File) entity exists. If the BMF entity doesn't exist, follow the IRM steps to submit a Form 4442 to the EP AIMS Coordinator to have the BMF created. See IRM 4.70.13.9.5.2.2, EP – Preparation of Form 4442.
- (3) Once the BMF is created or verified to already exist, follow these steps to establish the SFR in RCCMS and AIMS:
  - a. In the RCCMS Folder List View, click on your Inventory Listing. In the RCCMS Menu Bar, click on Actions, and then select New Compliance Activity. A new compliance activity window will open. Complete the following entries:
  - b. In the Entity Section at the top, input the following:

In the Entity Section at the top, input the following:	
1)	Ensure the Update AIMS box is checked
2)	The Validate for* box should be set to <b>“Establish”</b> .
3)	Input the put the taxpayer's TIN (either an EIN or an SSN) and select “0 – Valid TIN” for the TIN validity
4)	Input the taxpayer's Name <b>Note:</b> You may need to click the Name box to input the name.
On the General (1 of 2) tab, input the following:	



1)	Under Type, select 5330 Return or 990-T Return
2)	Under Activity Code, select 310 – Form 5330 or 311- Form 990-T
3)	Input the Tax period
4)	Check the SFR indicator box
5)	Input the Plan number
6)	Input the Return due date and corresponding Statute Date
7)	Under Alpha Day, select EE – No Return Filed-IRC 6501(c)(3).
<b>On the Codes/Check Sheets tab, input the following:</b>	
1)	Input the Name control
2)	Under Project code always select the same code as the original pension exam return
3)	Under Source Code, select 43 -- Substitute for Return
4)	Under Aging reason code, select 026 -- Used to Bypass MF ASER Update to AIMS
5)	Under Master File type, select BMF -- Business Master File
6)	Under MFT code, select code 76 -- Form 5330 or 34-Form 990-T
7)	Under Status code, select 12 -- Assigned, Started and the Activity grade.
8)	Under Push Code, select 036 -- Substitute for Return
9)	Under Return requisition code, select 3 -- Return, Chargeout & Labels Not Requested

- c. Click Save and Close in the menu bar at the top.
- d. Pick create a new case and click OK.
- e. Back on the main RCCMS window, select the activity you just created. In the RCCMS menu bar, click Actions, Request Establishment. Click OK.

- (4) In the RCCMS Menu Bar, click Send/Receive to complete a sync and send the establishment request to your manager.

4.70.13.9.8.8  
(11-22-2023)

## **Processing Employment Tax Substitute for Return**

- (1) If a taxpayer does not file the required return(s), the next step is to initiate Substitute for Return (SFR) procedures. Substitute for Return procedures are applicable when ALL efforts have been exhausted to secure a return from the taxpayer. IRC 6020(b) authorizes the Secretary to prepare the return(s). Delegation Order 5-2 (IRM 1.2.44.3) gives us the authority to act for the Secretary in this situation.
- (2) Use these IRMs to process substitute for returns:
  - IRM 4.4.9.6, Substitute for Return
  - IRM 4.5.3.19.6, Substitute for Return Processing
  - IRM 4.23.12.4, Controlling and Processing Delinquent or SFR Procedures
  - IRM 4.23.12.4.3, IRC 6020(b) Procedures for SFR Employment Tax Cases
  - IRM 20.1.2.3.10, Substitute for Return - IRC 6651(g)
  - IRC 3402(d); IRC 6020(b); IRC 6651(a)(1); IRC 6651(a)(2); and IRC 6651(g)
- (3) Research and print IDRS to ensure no return has posted: INOLES, AMDISA, BMFOLI and BMFOLT. If “-Z” or “-V” freeze code is present on the account, coordinate with either CI or Bankruptcy to see if case can be worked. (IRM 4.4.9.6.21)
- (4) If there is a TC 150 the taxpayer filed a return and regular examination procedures will be followed.
- (5) If no TC 150 is present, request establishment of return period(s) for AIMS in RCCMS:
  - a. Prepare Form 2275 with BMFOLR as the return document
  - b. In the “Validate for:” field, select “Establish” and make sure you check the “Update AIMS” box.
  - c. Complete all fields in RED with an \* (asterisk). The following is specific information for these fields: --Source Code to 25-Substitute for Return (Codes tab) --Alpha Day to “EE-No Return Filed” (Codes tab) -- Push Code to “036-Substitute for Return” (Codes tab) --Reason for Request—enter ‘Exam-SFR’
  - d. “Save and Close”, then “Request Establishment” from the “Actions” menu in the Inventory List View pane and synchronize.
- (6) Conduct the examination: determine the proper amount of wages, withholding and taxes. Prepare the reports and complete the examination using normal closing procedures for either agreed or unagreed cases.
- (7) The examiner should consider fraud potential. If the examiner identifies potential fraud, they should coordinate with their manager, Area Manager or Program Manager and the TE/GE Fraud Coordinator.
- (8) Prepare the reports and complete the examination using normal closing procedures for either agreed or unagreed cases:
  - Prepare Form 13496-A for each tax period, signed and dated with either a ‘real’ or a digital signature. See Interim Guidance SBSE-04-1115-0073. The date on the form must be on or after the date of the 30-day letter or agreed report.

- Attach the Form 13496-A and the appropriate Report, to the return. Since this is an SFR, use a BMFOLT and BMFOLI as the 'return.'
- If the report is subsequently revised, a new Form 13496-A must be prepared, with a new date.
- In the absence of reasonable cause, the exam report should include:  
Failure to File penalty at 4.5% per month (maximum 5 months, 22.5%);  
A note that Failure to Pay at 0.5% per month (computed from the due date of the return, maximum 25%) will be charged at a later date;  
Failure to Deposit, computed at the appropriate rate, for any amounts that the taxpayer had in his possession that were not deposited, e.g. the employer's portion of FICA, income tax that was withheld from employees, vendors, etc. but not deposited timely.

**Note:** The FTF & FTP are computed on the tax due before any relief per IRC 3402(d).

- (9) Processing and closing procedures will be treated like any other examination. These are some common items included in the case file, the list is not all-inclusive.
  - Current AMDISA
  - Examination Report forms
  - Form 4318, Work Paper Index with work paper detailing exam steps
  - Form 9984, Activity Record
  - Work papers (electronic work papers should be loaded in the RCCMS Office Documents folder)
  - Closing Letter. Use appropriate letter for specific type of closure (agreed, unagreed, etc.)
- (10) If a return is received after an SFR TC 150 has posted, the amounts on the secured return must be incorporated into a report and assessed as a TC 300. Do not forward the return to Campus for posting. If you received a signed valid return from the taxpayer, 6020(b) procedures do not apply.
- (11) Processing depends upon if penalties are being assessed or not, however the follow steps must be completed on all delinquent returns secured after SFR has been posted.
  - Verify taxpayer's name, address, TIN, the signature is original and the return is dated
  - Verify the appropriate period/year tax form was used. If not, enter the tax period in YYYYMM format in BOLD above the tax period printed on the form.
  - Date stamp the return with the date received in the upper 1/3 of the return but not over any of the computations or numbers that have been input by the taxpayer.
  - Write in RED in the top margin, 'Delinquent Return Secured by TE/GE'
  - Prepare Form 3177 to update the Master File
  - Enter an 'X' in the 'Other' box at the bottom of the form
  - Enter 'TC 971 AC 282 Return Received Date MM/DD/YYYY' on the line next to the 'Other' box.
  - Forward Form 3177 to TE/GE FAST Unit via secure email
  - Update the statute date (ASED) on Master File and AIMS through RCCMS
  - Validate for 'Update', make sure you check the 'Update AIMS' box

- Update the following fields: SFR Indicator field (General tab) – remove checkmark
- Return Received Date (General tab)
- Statute Date (General tab)
- Alpha Day (General tab) – remove ‘EE’ designation
- Save and Close’ then ‘Request Update’ from the ‘Actions’ menu in the Inventory List View pane, enter “Update statute to MM/DD/YYYY; TP filed return after SFR input” in the ‘Update’ dialog box, click OK.
- If there is a refund on the return, ensure the Refund Statute Expiration Date (RSED) has not expired. If RSED has expired, the refund cannot be issued to the taxpayer. Notate “RSED expired” on the electronic RCCMS 3198-A Special Handling checksheet in the RCCMS compliance activity, Other Instructions section.
- Update statute information in RCCMS.

(12) If Penalties being asserted:

- Prepare the appropriate exam reports to reflect the amounts shown on the secured delinquent return. Since penalties are proposed, the taxpayer must sign the report. ? If the taxpayer does not agree with the penalties, 30-day letter procedures must be followed and partial assessment procedures apply for the tax. The exam report, 30-day letter and Form 886-A, must notate “case is partially agreed for the tax based on taxpayer signature on delinquent returns.”
- If the taxpayer agrees with the penalties, attach the signed delinquent returns to the appropriate exam report and assemble the agreed exam case for closure using normal agreed closing procedures.
- The Form 3198 will notate, “SFR TC150 Posted—Process Delinquent Return as Final Closure”.

(13) If penalties are not being asserted:

- Prepare the appropriate exam reports to reflect the amounts shown on the secured delinquent return. The taxpayer does not need to sign the report. The exam report must notate “case is agreed based on taxpayer signature on delinquent returns.”
- Attach the signed delinquent returns to the appropriate exam report and assemble the agreed exam case for closure using normal agreed closing procedures.
- Notate on the electronic RCCMS 3198-A Special Handling checksheet in the other information section, “SFR TC150 Posted—Process Delinquent Return as Final Closure”.

4.70.13.9.8.9  
(11-22-2023)

**EO Delinquent and SFR  
Forms 4720 and 4720-A**

- (1) Taxpayers who act or fail to act in a manner that subjects them to tax under Internal Revenue Code Chapters 41 and 42 are required to file Form 4720. For example, if a taxpayer is a self-dealer, disqualified person, organization manager, donor or donor advisor, or related person, the taxpayer completes Part II of Form 4720. When Part II is processed, Form 4720 is designated Form 4720-A (MFT 66).

**Reminder:** Form 4720-A isn’t a standard form in the Electronic Publishing Products Catalog. A Form 4720 is designated as Form 4720-A (MFT 66) if a taxpayer completes Part II-A.

(2) Form 4720 (MFT 50) is an AIMS MF return, while Form 4720-A (MFT 66) is an NMF return.

(3) Verify that a return is in fact delinquent through IDRS research.

**Note:** Obtain NMF transcripts. See IRM 4.70.13.9.2.

(4) If you secure a delinquent Form 4720 or 4720-A:

- a. And determine that you will establish examination controls, follow delinquent return procedures in IRM 4.70.13.9.8.9.2, Establishing Secured Delinquent Form 4720-A.
- b. Follow payment processing instructions in IRM 4.70.14.3, Payment Processing. For Form 4720-A, use TC 640 instead of TC 610 or TC 670 on Form 3244-A.
- c. Payments must be processed within 24 hours.

(5) If the taxpayer participates in a taxable event, follow SFR procedures in IRM 4.70.13.9.8.9.3 assuming no Form 4720 returns are filed. Establish examination controls using procedures in IRM 4.70.13.9.8.9.4 Establishing Delinquent and SFR Form 4720-A. For purposes of Form 4720-A, see Exhibit 4.70.13-3, EO Establishing Form 4720-A on RCCMS.

(6) After issuing the taxpayer an examination report, prepare the SFR package as instructed in IRM 4.70.13.9.8, Substitute for Return Procedures.

4.70.13.9.8.9.1  
(11-22-2023)

**EO Establishing  
Examination Controls  
for Forms 4720 and  
4720-A**

(1) For instructions on establishing a secured delinquent Form 4720-A on AIMS Non-Master File and RCCMS, go to IRM 4.70.13.9.8.9.2, Establishing Secured Delinquent Form 4720-A, and to Exhibit 4.70.13-3.

(2) For instructions on establishing an SFR Form 4720-A on AIMS and RCCMS, go to IRM 4.70.13.9.8.9.3, EO Establishing SFR Form 4720-A.

(3) For instructions on establishing a delinquent and SFR Form 4720-A (private foundations and public charities), go to IRM 4.70.13.9.8.9.4, Establishing Delinquent and SDR Form 4720-A

**Reminder:** Form 4720-A is not a standard form in the Electronic Publishing Products Catalog. A Form 4720 is designated as Form 4720-A (MFT 66) if a taxpayer completes Part II-A.

4.70.13.9.8.9.2  
(11-22-2023)

**Establishing Secured  
Delinquent Form 4720-A**

(1) Because Form 4720-A is an NMF form, you must submit a secured delinquent Form 4720-A immediately for processing. If you receive a payment and you process the payment within 24 hours of receipt, it will not post until the delinquent NMF return and assessment posts.

(2) Establish examination controls using RCCMS, and then manually on NMF using Form 5588, TE/GE Non-Master File Request. See Exhibit 4.70.13-4, EO Establishing Form 4720-A on RCCMS.

- a. When establishing Form 4720-A on RCCMS, leave the "Update AIMS" box unchecked.
- b. For both RCCMS and Form 5588 use Source Code 44.
- c. The entries on Form 5588 should mirror the RCCMS module.

- d. The statute date is based on a filed Form 990, Form 990-EZ, or Form 990-PF. See IRM 4.70.12.3.8, Statute of Limitations, for determining statute dates.
- e. Submit completed Form 5588 via secure e-mail to your group manager for signature. The group manager then e-signs the form and forwards it to their IDRS clerk/secretary for input.

(3) Form 5888 Instructions are as follows:

Field	Enter
Line 2 (P1-35)	Taxpayer's Name
Line 3 (P1-35)	Taxpayer's street address
Line 4 (P1-25)	Taxpayer's city
Line 5 (P1-2)	Taxpayer's state
Line 5 (P4-15)	Taxpayer's ZIP code
Line 6 (P1-6)	The tax period under examination
Line 6 (P8-13)	"4720-A"
Line 7 (P1-8)	The statute date, using the date of the controlling Form 990 or Form 990-PF. In determining a statute date for Form 4720-A, see IRM 4.70.12.3.8, Statute of Limitations. For IRC 4958 excess benefit transactions, see IRM 8.7.8.3.6.2, Excise Taxes.
Line 8 (P1-2)	"44" for secured delinquent returns, "43" for SFRs
Line 8 (P4-6)	"334" for individuals
Line 9 (P1-2)	"66"
Line 9 (P4)	"3" (return not requested)
Line 10 (P1-2)	The applicable status code ("10", "12", "20", "24", etc.)
Line 11 (P1-3)	The primary business code for your area
Line 11 (P11-14)	The group number for your group
Line 12 (P1-4)	The four character name control
Line 12 (P6-9)	The special project code, if applicable
Reason for Request	"Establish NMF AIMS"
Requester/Date	Your name and the current date
Approved By/Date	The approving manager's name and current date

**Reminder:** Form 4720-A is not a standard form in the *Electronic Publishing Products Catalog*. A Form 4720 is designated as Form 4720-A (MFT 66) if a taxpayer completes Part II-A.

4.70.13.9.8.9.3  
(11-22-2023)  
**EO Establishing SFR  
Form 4720-A**

- (1) Because Form 4720-A is a NMF return, you must establish the SFR Form 4720-A immediately. If you receive a payment and you process the payment within 24 hours of receipt, it will not post until the SFR and assessment posts on NMF.
- (2) Establish examination controls using RCCMS and then manually on AIMS NMF using Form 5588, TE/GE Non-Master File Request:
  - a. See Exhibit 4.70.13-3, Establishing Form 4720-A on RCCMS. Leave the "Update AIMS" box unchecked.
  - b. For both RCCMS and Form 5588, use Source Code 43.
  - c. The entries on Form 5588 should mirror the RCCMS module.
  - d. The statute date is based on a filed Form 990, Form 990-EZ, or Form 990-PF. See IRM 4.70.12.3.8, Statute of Limitations, for determining statute dates.
  - e. Submit completed Form 5588 via secure e-mail to your group manager for signature. The group manager then e-signs the form and forwards it to their IDRS clerk/secretary for input. See IRM 4.70.13.9.8.9.2 (2), Establishing Secured Delinquent Form 4720-A, for establishments on AIMS NMF.

4.70.13.9.8.9.4  
(11-22-2023)  
**Establishing Delinquent  
and SFR Form 4720**

- (1) If you secure a delinquent Form 4720, Return of Certain Excise Taxes on Charities and Other Persons Under Chapters 41 and 42 of the IRC, from a public charity or a private foundation, follow delinquent return procedures in IRM 4.70.13.9.5, Delinquent Return Secured.
- (2) If you pick-up a secured delinquent Form 4720 for examination, establish the module on AIMS Master File via RCCMS:
  - Use MFT 50.
  - Use source code 44.
  - Use push code 020.
  - Use activity code 334.
- (3) Delinquent Form 4720 takes 8 to 10 weeks to post to IDRS.
- (4) For SFR Forms 4720, establish the examination module on AIMS Master File via RCCMS:
  - Use MFT 50.
  - Use source code 43.
  - Use push code 036.
  - Use activity code 334.
- (5) SFR Form 4720 takes 2 weeks to post to IDRS.
- (6) ASED Alpha Code "EE" may not be applicable as the statute is based on a filed Form 990 or Form 990-PF. See IRM 4.70.12.3.8, Statute of Limitations, for determining statute dates.



4.70.13.9.9  
(11-22-2023)  
**Reasonable Cause  
Determination**

- (1) Refer to the following guidelines for reasonable cause determinations:
  - For Servicewide reasonable cause criteria, refer to IRM 20.1.1.3.2.
  - For EO reasonable cause criteria, refer to Exhibit 4.70.13-4, IRM 20.1.8-3 and IRM 21.7.7.6.24.
- (2) Review the taxpayer's filing history with command codes BMFOLI and BMFOLT (or IMFOLI and EMFOLT or EMFOLI and EMFOLT as appropriate.) Determine if the taxpayer has filed returns timely for prior and subsequent tax years.
- (3) In addition to the "reasonable cause" category for penalty relief, refer to IRM 20.1.1.3 for in-depth discussions of other categories of relief, such as:
  - Statutory and regulatory exceptions (see IRM 20.1.1.3.3.1).
  - Administrative waivers (see IRM 20.1.1.3.3.2).
  - Corrections of Service errors (see IRM 20.1.1.3.4 IRM 20.1.1.3.4).
- (4) Taxpayers who seek relief from penalties generally must submit a written statement requesting a waiver of penalties. Include in the statement:
  - Taxpayer's name.
  - Taxpayer's address.
  - Taxpayer's identification number.
  - Type of tax.
  - Tax periods.
  - Explanation of failure to file, pay or make deposits.
  - The statement: *"Under penalties of perjury, I declare that the above statement, to the best of my knowledge and belief, is true, complete, and correct"*
  - An original signature.
  - Date signed.
- (5) You can only consider oral or written but unsigned requests for penalty relief for certain penalties or situations. See IRM 20.1.1.3.1 for guidance.
- (6) A penalty relief statement is acceptable if it:
  - Appears to a person of ordinary prudence and intelligence there is reasonable cause for delay in filing a return.
  - Clearly indicates no willful intent to disobey the taxing statutes.
- (7) Don't presume reasonable cause in cases where the taxpayer claims:
  - Ignorance of the law. See IRM 20.1.1.3.2.2.6.
  - Reliance on a professional agent, such as an attorney or accountant. See *U.S. v Boyle*, 469 U.S. 241 (1985).

**Note:** Determine each case on its own merit.
- (8) Determine whether the taxpayer's explanation establishes reasonable cause.
  - a. If the relief criteria aren't clearly established, go to IRM 4.70.13.9.9.2.
  - b. If the relief criteria are clearly established, go to IRM 4.70.13.9.9.3.

4.70.13.9.9.1  
(11-22-2023)

**Treatment of Timely but  
Unsigned Returns**

- (1) Per Policy Statement P-3-5 (formerly P-2-11) (IRM 1.2.1.4.5), the IRS doesn't assert a delinquency penalty if an unsigned tax return is timely filed on the prescribed form and if applicable, accompanied by proper payment, provided that:
  - The taxpayer, upon request, subsequently files a valid (signed and dated) return.
  - The facts surrounding the failure to sign the return clearly indicate there was no willful intent to violate the statute.
  - Gross negligence **is not** involved.

4.70.13.9.9.2  
(11-22-2023)

**Penalties to be  
Assessed**

- (1) For general information on penalties, refer to:
  - IRM 20.1.1, Introduction and Penalty Relief.
  - IRM 20.1.8, Employee Plans and Exempt Organizations Miscellaneous Civil Penalties.
  - IRM 21.7.7.6.23, Exempt Organization Penalties.
- (2) Delinquency penalties and other civil penalties applicable to TE/GE are discussed in the following manuals:
  - IRM 20.1.2, Failure to File and Failure to Pay Penalties (see also IRM 20.1.8.1.2).
  - IRM 20.1.3, Estimated Tax Penalties.
  - IRM 20.1.4, Failure to Deposit Penalty.
  - IRM 20.1.5, Return-Related Penalties.
  - IRM 20.1.6, Preparer/Promoter/Material Advisor Penalties.
  - IRM 20.1.7, Information Return Penalties.
  - IRM 20.1.8.2, Exempt Organizations and Certain Trusts (includes daily delinquency penalties).
  - IRM 20.1.10, Miscellaneous Penalties.
  - IRM 4.23.9, Employment Tax Penalty and Fraud Procedures.
- (3) Delinquency penalties will be imposed on a delinquent return you secure unless you explicitly waive them on the Form 3198-A that are part of the delinquent return package destined to the FAST.

4.70.13.9.9.3  
(11-22-2023)

**Penalties to be Waived**

- (1) On each Form 3198-A indicate in the Other Instructions field to not assess the failure to file and/or failure to pay penalties.
- (2) On Form 13133, check the appropriate computer condition code boxes.
- (3) The FAST will edit the applicable computer condition codes in the appropriate location on the tax returns.
  - Exhibit 4.70.13-2, provides a list of valid computer condition codes.
  - Exhibit 4.70.13-5, identifies where the FAST will mark the computer condition code on each type of return.
- (4) Refer to Document 6209 for Penalty Reason Codes. See also IRM 20.1.1-2.
- (5) The first time abate (FTA) is an administrative waiver or abatement available to a taxpayer for these penalties:
  - Failure to File: (IRC 6651(a)(1) IRC 6698(a)(1) and IRC 6699(a)(1).
  - Failure to Pay: (IRC 6651(a)(2) and IRC 6651(a)(3)).
  - Failure to Deposit: (IRC 6656)

**Note:** See IRM 20.1.1.3.6.1, RCA and First Time Abate (FTA) Consideration and IRM 4.23.9.12, First Time Abate (FTA) Waiver.

4.70.13.9.9.4

(11-22-2023)

## Abatement of Penalties

- (1) If penalties on a secured return are assessed in error by the Service Campus, and the case is still open, they can be abated through the RCCMS Closing Records, Individual/Bus. (1 of 3) tab using transaction code 161, Abatement of Delinquency Penalty, and 271, Manual Abatement of Failure to Pay Tax Penalty, (as applicable).
- (2) If penalties on a secured return are assessed in error by the Service Campus, and the case is closed, contact the TE/GE Closing Group manager to get them abated using Form 3870.
- (3) **EP:** If you discover that late filing penalties were incorrectly assessed on Forms 5500, because reasonable cause criteria are met or for other valid reasons, and need to be abated:
  - a. Secure an EMFOLT print for the applicable return.
  - b. Prepare the Reasonable Cause Lead Sheet. See Employee Plans Examinations Exhibits, for a Reasonable Cause Lead Sheet you may use as an examination workpaper.
  - c. Prepare Form 3870, Request for Adjustment, securing your manager's approval. See Employee Plans Examinations Exhibits for an example of a completed Form 3870.
  - d. Email the EMFOLT print, declaration of reasonable cause prepared by the taxpayer or POA (if applicable), the Reasonable Cause Lead Sheet, and Form 3870, to Classification with an explanation of the problem. See Employee Plan Examinations Exhibits, Contact Information for Classification's email address.
  - e. Classification will review the information received from the examiner to confirm that the request is valid and complete. Classification will forward the completed Form 3870 and other documentation received from the examiner, to the designated person in the Ogden Service Center to abate the penalties.

**Note:** The examiner must not contact the Service Center directly, but must instead go through Classification.

- f. The examiner must inform the taxpayer that he/she will have the penalties removed from the taxpayer's account.

4.70.13.9.10

(11-22-2023)

## Payment Processing

- (1) Send all payments and original remittance documents directly to the Ogden Campus addresses.
- (2) For procedures, see IRM 4.70.14.3 Payment Processing.

4.70.13.9.11

(11-22-2023)

## Shipping to the FAST Unit

- (1) When shipping original delinquent returns to the FAST:
  1. Prepare Form 3210, Document Transmittal, addressed to the FAST. List each delinquent return.
  2. Print Form 3210 in triplicate. Sign and date each copy of Form 3210.
  3. Prepare dual envelopes addressed to the FAST.
  4. Place the recipient and acknowledgment copies of Form 3210 with the original returns in the envelope.

5. Follow local office procedures for the retention of the originator's copy of Form 3210.
  6. Submit the delinquent return package to the FAST for processing.
  7. Converted returns only. Don't seal the envelopes.
  8. Converted returns only. Don't send a converted return package to the FAST. Mandatory Review submits the converted return package to the FAST after the underlying adverse status change (for example, revocation) is sustained.
- (2) Ship delinquent or amended returns to the FAST as follows (**Do not** include payments):

<b>FAST U.S. Postal Service Address and UPS Address</b>	Tax Exempt & Government Entities FAST Attention: FAST M/S 1114 1973 N. Rulon White Blvd Ogden, UT 84201-0252
<b>FAST Contact Numbers and E-mail Address:</b>	
FAST e-FAX Number	(877) 814-2236
FAST e-mail address	*TEGE FAST

- (3) Send all payments and remittance documents separately to the Ogden Campus. See IRM 4.70.14.3, Payment Processing.
- (4) Refer to IRM 10.5.1.6.9.3, for instructions for shipping and preparing and following up on Form 3210.
- (5) For additional information on shipping procedures and PII, refer to Document 13056 and IRM 10.2.13.

4.70.13.10  
(11-22-2023)  
**Processing EO Entity Errors**

- (1) Errors noted during the EO Examination EOBMF entity errors such as organization name, address, etc. will be corrected by preparing the Form 2363 and then submitting to the FAST Unit via email attachment.
- (2) Examination changes to an organization's status require the preparation of the examiner on F2363-A and included in the case file subject to mandatory review.
- (3) Mandatory review will process the entity change to FAST Unit after concurrence with the entity status change. See IRM 4.5.16.4.5.

4.70.13.11  
(11-22-2023)  
**Discrepancy Adjustment**

- (1) Discrepancy adjustments fall within the scope of Rev. Proc. 2005-32. Discrepancy adjustments do not constitute examinations, inspections, or re-openings under IRC 7605(b). See Policy Statement 4-3, IRM 1.2.1.5.1. See IRM 4.70.15. Discrepancy Adjustments, for procedures when a Form 1040 or Form 1120 discrepancy adjustment is appropriate and the procedures for processing the adjustment.

4.70.13.12  
(11-22-2023)  
**Penalty Consideration**

- (1) The Service maintains an ongoing effort to develop, monitor and revise programs designed to assist taxpayers in complying with legal requirements and avoiding penalties. As indicated in Policy Statement P-20-1, the Service uses penalties to encourage voluntary compliance.
- (2) Policy Statement P-20-1 also states that the IRS administers a penalty policy that is designed to:
  - a. Ensure consistency
  - b. Ensure accuracy of results considering the facts and the law
  - c. Provide methods for taxpayers to have their interests heard and considered
  - d. Require impartiality and commitment to achieve the correct decisions
  - e. Allow for prompt reversal of initial determinations when sufficient information has been presented to indicate that the penalty is not appropriate
  - f. Ensure that penalties are used for their proper purpose and not as bargaining points in the development or processing of cases. See IRM 1.2.1.12, Policy Statements for Penalties and Interest Activities.

4.70.13.12.1  
(11-22-2023)  
**Examiner Responsibility**

- (1) The examiner is responsible for identifying the appropriate penalties, determining whether to assert penalties, and accurately calculating the penalty amount. IRM 20.1, Penalty Handbook, contains a list of common civil tax penalties.
- (2) The examiner will inform the taxpayer as early as possible when and why penalties are being considered. The examiner will provide the taxpayer an opportunity to respond to the assertion based on facts and law.
- (3) Examiners must document the reasons for imposing or not imposing penalties and the manager's involvement in the workpapers related to the penalty under consideration. See IRM 20.5.2.3, Supervisory Approval of Penalties - IRC 6751 Procedural Requirements, for additional guidance.
- (4) Consult with Counsel or a penalty subject matter expert, if needed.

4.70.13.12.2  
(11-22-2023)  
**Managerial Involvement**

- (1) The group manager must be actively involved with the development of all penalty issues. Coordination with the Fraud SMEs and others may be required.
- (2) The group manager must approve all penalty assessments other than the application of penalties imposed by IRC 6651. See IRC 6751(b). See IRM 20.1.1.2.3, Approval Prerequisite to Penalty Assessments for guidance regarding managerial approval. Additionally, managerial approval is recorded in RCCMS when adding the appropriate Penalty issue code(s) to the issue code data grid.
- (3) For more information, see IRM 20.1.5.2.3, Supervisory Approval of Penalties - IRC 6751 Procedural Requirements.

4.70.13.12.3  
(11-22-2023)  
**Common Penalties**

- (1) The IRM 20.1, Penalty Handbook provided guidance on common civil tax penalties. Penalties common to TE/GE includes the following:
  - Failure to file and failure to pay, see IRM 20.1.2, Failure to File/Failure to Pay Penalties.
  - Failure to deposit, see IRM 20.1.4, Failure to Deposit Penalty.

- Accuracy-related penalties on underpayment, including negligence or disregard of rules or regulations, substantial understatement of income tax, substantial or gross valuation misstatements, see IRM 20.1.5, Return Related Penalties.
  - Accuracy-related penalties on understatements with respect to a reportable transaction, see IRM 20.1.5.17, IRC 6662A, Accuracy-Related Penalty on Understatements with Respect to Reportable Transactions
  - Failure to include reportable transaction information with a return, see IRM 20.1.6, Preparer, Promoter, Material Advisor Penalties.
  - Failure to file information returns, see IRM 20.1.7, Information Return Penalties.
  - Penalties unique to TE/GE Functional units, see IRM 20.1.8, Employee Plans and Exempt Organization Miscellaneous Civil Penalties.
  - Employment tax penalties involved with the correct filing, reporting, and payment of employment taxes, see IRM 4.23.9, Employment Tax Penalty, Fraud, and Identity Theft Procedures.
  - TEB transactions subject to a promoter penalty described in IRC 6700, see IRM 20.1.6.13.
- (2) IRM 20.1, Penalty Handbook, also provides guidance on penalty relief, see IRM 20.1.1, Introduction and Penalty Relief. Generally, relief from penalties falls into four separate categories. The criteria of each category can be found in IRM 20.1.1.
- Correction of the IRS error
  - Statutory and Regulatory exceptions
  - Administrative waivers
- (3) Additional information on penalty assessment and relief is located on the *IRS Knowledge Management Site*.

4.70.13.12.3.1  
(11-22-2023)  
**Fraud Penalties**

- (1) A civil fraud penalty case may be developed based on the facts and circumstances of a civil examination or may occur at the completion of a criminal prosecution case. In either situation, the examiner and team manager must contact their local Fraud Technical Advisor when fraud is suspected. The examiner and Fraud Technical Advisor will jointly prepare Form 11661, Fraud Development Recommendation – Examination.
- (2) Assertion of a civil penalty is a shared responsibility of the examiner, team manager and Fraud Technical Advisor. Civil fraud determinations no longer require a referral or concurrence by Criminal Investigation. The procedures described in IRM 25.1.6 relative to civil fraud cases must be followed.
- (3) If during the fraud development process, firm indications of fraud exist and criminal criteria is met, a referral via Form 2797 Referral Report of Potential Criminal Fraud, must be prepared and submitted via the Fraud Coordinator to Criminal Investigation. See *TE/GE Points of Contact* on the Fraud Development Knowledge Base Site.
- (4) Specific guidance on all aspects of both criminal and civil fraud are described in IRM 25.1, Fraud Handbook. Additional procedures required for TE/GE cases can be found in IRM 4.70.13.13, Fraud and Abusive Transaction Procedures.



4.70.13.12.4  
(11-22-2023)  
**Workpaper  
Documentation on  
Penalties**

- (1) The consideration, assertion or non-assertion, and computation of all applicable penalties must be documented in the case file. An applicable penalty is defined to be one which the legal premise for application is present in the case. The decision to assert penalties must have a legal basis in the Internal Revenue Code or other authority.
- (2) Penalties will not be asserted without an explanation and without managerial approval. The extent of the explanation will depend upon the nature of the adjustments and the amounts involved. However, “canned” statements, such as “negligence penalty applicable” or “negligence penalty deemed to be not applicable”, are not sufficient. Managerial approval of penalties must be personally documented in writing by the immediate supervisor of the individual making the initial determination to assess a penalty, or such higher-level official as the Secretary may designate.
- (3) Alternative penalty positions should be documented in the workpapers when applicable (for example, fraud versus negligence penalties and various components of the accuracy-related penalty).

4.70.13.12.4.1  
(11-22-2023)  
**Burden of Proof  
Regarding Assessment  
of Penalties**

- (1) IRC 7491(c), which applies only to individuals, states that the IRS has the burden of production in a court proceeding when the issue is a penalty, an addition to tax, or an additional amount imposed by the Internal Revenue Code. The IRS must first present evidence that imposition of the amount is appropriate. Only then does the taxpayer assume the burden of persuasion to raise appropriate defenses, such as reasonable cause, to the imposition of the penalty, addition to tax, or additional amount imposed by the Code. Also, see IRM 25.1.6, Civil Fraud.

4.70.13.12.5  
(11-22-2023)  
**Miscellaneous Civil  
Penalties**

- (1) These penalty procedures apply to all TE/GE examiners. For details technical and procedural information not covered here, refer to:
  - IRM 20.1.1, Introduction to Penalty Relief.
  - IRM 20.7.2, Common Features.
  - IRM 20.1.7.3, Penalty Dollar Amounts and Limitations.
  - IRM 20.1.7.4 IRM 20.1.7.4, Powers of Attorney for Civil Penalties.
  - IRM 20.1.7.8, Failure to File Correct Information Returns IRC 6721.
  - IRM 20.1.7.9 IRM 20.1.7.9, Failure to Furnish Correct Payee Statements IRC 6722.
  - IRM 20.1.7.10 RM 20.1.7.10, Failure to Comply with Other Information Reporting Requirements IRC 6723.
  - IRM 20.1.7.12 RM 20.1.7.12, Waivers, Definitions and Special Rules IRC 6724 – Reasonable Cause.
  - IRM Exhibit 20.1.7.-1, IRC 6721 & 6722 Penalty Rates for Large Businesses and Government Entities (Other than Federal Entities) with Gross Receipts Over \$5 Million (Average annual gross receipts for the most recent 3 taxable years.
  - IRM Exhibit 20.1.7.-2, IRC 6721 & 6722 Penalty Rates for Small Businesses with Gross Receipts Less than or Equal to \$5 Million (Average annual gross receipts for the most recent 3 taxable years.
  - IRM Exhibit 20.1.7.-6, PMF Civil Penalty Transcript.
  - IRM 4.23.8.11, Information Return Penalty Case File.
  - IRM 4.23.9.13, Penalties for Failure to File Certain Information Returns or Furnish Certain Statements.



- IRM Exhibit 4.23.9-1, Instructions for Determining Civil Penalty Statute of Limitations.
- (2) If miscellaneous civil penalties apply (even if waived), request manager approval to establish a miscellaneous civil penalty compliance activity in RCCMS. Miscellaneous civil penalties proposed assessments on Form 8278 are not subject to 'Statutory Notice of Deficiency' procedures. Therefore, don't solicit a signature from the taxpayer. If the taxpayer indicates agreement with the proposed penalties, solicit full payment.

**Note:** Don't secure an agreement on Form 2504 or Form 4549. The information return penalty case file is separate from an employment, income tax, or other case file.

- (3) If you grant penalty relief, document the non-assessment of the penalty in the penalty case file workpapers. Assess the penalty for zero ('0') using Form 8278, with the applicable Penalty Reference Number and Penalty Reason Code. This creates a trail on IDRS showing the considered penalty, the year of consideration, and the reason we didn't assert it. Adequately document in the workpapers the reasons for non-assertion of penalties. See IRM 4.23.8.11(8) for instructions on completing Form 8278 when the penalty is waived. See IRM 20.1.1.3 for criteria for relief from penalties. Penalty relief falls into separate categories. They are:
- Reasonable cause
  - Statutory exceptions and administrative waivers
  - Correction of service error
- (4) Establish the miscellaneous civil penalty compliance activity on WebETS using activity code 507 unless asserting penalties in an existing Information Return Exam (IRE) case.
- (5) Establish the electronic compliance activity in RCCMS, unless asserting the penalties in an existing IRE compliance activity. Underneath the main activity, select "File", "New", "Compliance Activity".
- a. Complete these entries on the Compliance Activity "General (1 of 2)" tab to establish a civil penalty case file:

Compliance Activity Field	Action/Entry
Validate for:	Establish.
POA:	Checked if POA is present; Unchecked if no POA is present.
Primary:	Unchecked (generally Information Return Civil Penalty Case is a related exam pickup from the key return under examination.
All Electronic:	Ensure that the "All Electronic" field is checked (no paper case file).
Update AIMS:	Unchecked.

Compliance Activity Field	Action/Entry
TIN:	Enter taxpayer's identification number.
Name:	Enter taxpayer's name as shown on INOLES.
Address:	Enter taxpayer's address as shown on INOLES.
Type:	Form 8278 – Miscellaneous Civil Penalties.
Activity Code:	Select "507 – Form 8279 – Miscellaneous Civil Penalties".
Tax Period:	Enter last quarter of the calendar year (e.g., 20XX12).
Return Due:	Enter the applicable return due date for the specific form: <ul style="list-style-type: none"> <li>• Use 01/31/YYYY for Form 1099-NEC with box 7 (NEC) amount for years 2019 and prior or W-2 for tax years beginning with 2016.</li> <li>• Use 01/31/YYYY for Form 1099-NEC for tax years beginning 2020.</li> <li>• Use 02/28/YYYY for Form 1099-NEC with no box 7 (NEC) amount for all years.</li> </ul>
Return Received:	<ul style="list-style-type: none"> <li>• Use the same date as Return Due Date for timely filed or non-filed information returns (see PMFOLD for date information returns were filed).</li> <li>• Use date received for secured delinquent information returns.</li> </ul>
Statute:	<ul style="list-style-type: none"> <li>• Enter 3 years from the date filed; or</li> <li>• Enter 3 years from the date delinquent information returns were secured; or</li> <li>• Enter the normal statute date for non-filed information returns (e.g., F1099-NEC for 2019 with box 7 entry will be 1/31/2023).</li> </ul>

Compliance Activity Field	Action/Entry
Alpha Day:	<ul style="list-style-type: none"> <li>Select 'EE' if no information returns were filed.</li> <li>Remove the 'EE' designation if the taxpayer submits delinquent information returns and update the statute (see below).</li> </ul>

**Note:** You may establish the penalty compliance activity in a separate RCCMS electronic case folder or include it in a related case folder for the same taxpayer (the preferred method).

- b. Complete these entries on the Compliance Activity "Codes/Check Sheets" tab to establish the civil penalty case file.

Compliance Activity Field	Activity/Entry
Name Control:	Use the name control from INOLES.
MFT Type:	Select "NMF – Non-Master File".
MFT Code:	Select "13".
Project Code:	Use the same project code as the primary case.
Source Code:	Select "50" for "Related Return Pickup."
Status Code:	Select "12".
Activity Grade:	Enter the examiner's grade.
Related Return Source Code:	Select the source code that pertains to the primary case.
Related Return:	Check the box.
Return Requisition Code:	Select "3 – Return, Chargeout & Labels Not Requested."
Reason for Request:	Type in an explanation for establishing the miscellaneous civil penalty.

- c. Fill in the "POA and Misc" tab if a POA is present. Select the type of POA/Contact from the dropdown box. Enter the POA/contact's name, address, phone number, fax number, as appropriate. No entry is request on the tab if no POA is present.
- d. Establish the civil penalty activity:
- 1) Select "Save and Close" on the RCCMS top line menu.

**Note:** If you'll include the penalty compliance activity in an existing RCCMS case (with related returns/tax periods), select the Existing Case button and select the case in your inventory.

**Note:** If you'll place the penalty compliance activity in a separate RCCMS case fielder, select the New Case button. Enter the case name that easily identifies taxpayer and type of case. Click "OK".

- 2) Highlight the activity in the Inventory List View.
- 3) Select "Request Establishment" in the Actions menu.
- 4) Click "Send and Receive".

**Note:** Do not establish the compliance activity on AIMS.

- (6) After the compliance activity becomes established in RCCMS and is no longer locked, submit applicable Exam Issues Codes in the RCCMS Issue Code data grid. See each functions' respective Information Systems Code book (Document 6379 (EO), Document 6476 (EP), and Document 11308 (GE)) for issue codes.
- (7) Prepare Form 8278, Assessment and Abatement of Miscellaneous Civil Penalties.
  - a. Prepare a Form 8278 for each tax year.
  - b. Find instructions to prepare Form 8278 on page 2 of the form.
  - c. Follow additional Form 8278 instructions in IRM 4.23.8.11(8) for information return penalties.
  - d. If you aren't assessing a penalty that otherwise applies because you've determined they meet qualifying criteria to waive it, enter the appropriate Penalty Reason Code (PRC) to identify why. See IRM Exhibit 20.1.1-2 for a list of appropriate PRCs and explanations.
  - e. Don't send a copy of Form 8278 to the taxpayer.
  - f. Keep Form 8278 in the penalty case file. Ensure you name the electronic file following the naming convention form and post the electronic file to the Office Documents folder in RCCMS.

## 4.70.13.12.5.1 (11-22-2023) Miscellaneous Civil Penalty Case File

- (1) On the RCCMS 3198-A Checksheet:
  - a. Check the "Other" block.
  - b. Add "Assess Civil Penalty as indicated on Form 827" if penalty is applicable.
- (2) Complete and include the following forms in the RCCMS Compliance Activity Office Documents folder:
  - a. Copy of Letter 5005, Letter 5005-P, Letter 5679, or similar penalty correspondence, if any.
  - b. Copy of the taxpayer's correspondence in reply, if any.
  - c. Copy of the taxpayer's request to waive penalties, if applicable.
  - d. Form 8278, one for each tax period.
  - e. Form(s) 3645, for Information Return Penalties. See IRM 4.23.8.11, Information Return Penalty Case File, for additional information.
  - f. Record on Form 886-A all pertinent information including the issues, facts, law, taxpayer's position, and conclusion. Attach it to Form 3645 as it becomes part of the Information Return Penalty case file.
  - g. Form 5773, Form 5773-A, or Form 4318. A separate worksheet summary sheet isn't required if asserting the penalties in an existing IRE compliance activity.

- h. Form 5464 or Form 9984. A separate Form 5464/9984 isn't required if asserting the penalties in an existing IRE compliance activity.
- i. Supporting workpapers, such as copies of secured transmittal forms or returns the miscellaneous civil penalties apply to.

4.70.13.12.5.2  
(11-22-2023)

**Closing the  
Miscellaneous Civil  
Penalty Case File**

- (1) If possible, close the penalty compliance activity with the related compliance activity.
- (2) Add Dollar amount equal to the proposed penalty to the applicable Issue Codes and check the Issue Closed check box for each Issue Code in the RCCMS Issue Code data grid.
- (3) If there are less than 270 days left on the statute, follow the statute validation process.
- (4) Close the penalty compliance activity on RCCMS as follows:
  - a. Entries required on the Compliance Activity "Codes/Check Sheets" tab to close a civil penalty case file:

Compliance Activity File	Action/Entry
Close:	Select "Close" in the "Validate for" field; this will generate red text for all fields required to be completed. If "Validate for" is not set to "Close", the Entries required will not be highlighted in red text.
All Electronic:	Ensure the "All Electronic" field is checked for all cases (no paper case file).
Update AIMS:	Unchecked.
Activity Grade:	Select appropriate grade. The manager must verify the Activity Grade upon closing.
Status:	Ensure the activity has been updated to Status Code 12 (if not, update before proceeding).
Related Return:	Check the box if this is a related pick-up (civil penalties are usually related pick-ups).
Save:	Click on the Save button (to the left of Save and Close.) This ensures the information completed on the Codes/Check Sheets tab is saved prior to accessing the Closing Record.

- b. Click on the Closing Records tab.
- c. Create the Closing Record, by selecting the "New Compliance" button.

**Note:** Any previous Closing Records you or CP&C created will already be listed in the Closing Record (for example a “Referral” case will come with a Closing Record already in the file). You don’t have to input any data into this existing Closing Record.

- d. Entries required on the Closing Record “General” tab to close a Miscellaneous Civil Penalty case file:

Compliance Activity Field	Action/Entry
ARDI Code:	No Entry.
Disposal Code:	Select “802 – Reference and Information Return”.
Closing with:	No Entry.
Remarks and Comments:	Type in any remarks required to be noted on RCCMS 3198-A Checksheet  <b>Example:</b> F2363; assess civil penalties per F3645/8278, etc.

- e. Entries required on the Closing Record “Details” tab to close a Miscellaneous Civil Penalty case file:

Compliance Activity Field	Action/Entry
Examiners Time:	Enter whole hours only.
Technique Code:	Select appropriate technique code.
Examiner’s Name:	Select your name from the drop-down list.
Save and Close:	The Closing Record is now displayed in the Closing Records tab of the Compliance Activity Record.

- f. Click “Save and Close” to close the Compliance Activity and go back to the main RCCMS screen showing the Folder List.  
g. Close the case:

- Click on Activities folder in the Navigation Pane for the case you want to close
- Select (highlight) the activity(s) you wish to close from the List View
- Select “Actions” from the top line menu
- Select “Request Closure”
- Type necessary closing comments in “Request Closure” dialog box
- Click “OK”
- Click “Send/Receive”

4.70.13.13  
(11-22-2023)

**Fraud and Abusive  
Transaction Procedures**

- (1) During the examination process, you should consider whether there are any indications of fraud or abusive tax transactions.
  - a. Fraud is deception by misrepresentation of material facts or silence when good faith requires expression, resulting in a material damage to one who relies on it and has the right to rely on it.
  - b. An abusive tax transaction is a transaction in which a significant purpose is the avoidance or evasion of federal income taxes. It offers inflated tax savings that are disproportionately greater than the actual investment placed at risk. Generally, an abusive tax avoidance transaction generates little or no income or capital appreciation. The transaction is often marketed in terms of reduction of a tax liability.
- (2) Tools to assist you evaluating whether there is potential fraud or abusive tax transactions and develop the issue can be found:
  - On the Fraud Development Knowledge Base Site, on the Fraud Development in Specialty Programs shelf there are three TE/GE-related books:

<i>TE/GE Fraud Tools and Resources</i> , <a href="https://portal.ds.irsnet.gov/sites/vl019/lists/tegefraudtoolsandresources/landingview.aspx">https://portal.ds.irsnet.gov/sites/vl019/lists/tegefraudtoolsandresources/landingview.aspx</a>
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<i>TE/GE Promoters and Abusive Transactions</i>
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<i>TE/GE Fraud Training</i>
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- In IRM 25.1, Fraud Handbook, specifically IRM 25.1.9, Fraud Handbook, Tax Exempt/Government Entities (TE/GE)
  - in IRM 4.32, Abusive Transactions
- (3) Discuss the indications of fraud or abusive tax transactions with your group manager and document in the CCR.

**Note:** Examples of TE/GE Indicators of Fraud can be found in Lesson 1 of the *TE/GE Fraud Techniques for Revenue Agents*.

- (4) If your manager agrees indicators of fraud or an abusive transaction are present, the Group Manager contacts the Functional Fraud Subject Matter Expert (SME) or the TE/GE Fraud Specialist for assistance with identification and development of fraud or an abusive transaction referral.



**Note:** See the *TE/GE Points of Contact on the Fraud Development Knowledge Base Site*.

4.70.13.14  
(11-22-2023)  
**Discussion of  
Examination  
Findings/Conclusions**

- (1) Examination fact gathering is complete after you've:
  - Interviewed taxpayers and third parties
  - Examined the books, records, and supporting documents
  - Toured facilities, if necessary
  - Researched questionable items
- (2) You will seldom have all of the information you'd like to resolve an issue. Decide when you have enough information to make an examination conclusion; the sooner you do, the sooner you can complete the case. This is less burdensome on you and the taxpayer.
- (3) Consider collectability for certain types of tax examinations, such as the examination of a converted return. See IRM 4.70.14.2.1.3.3.4, EO Enforcement Criteria. For collectability guidelines on income tax examinations, see IRM 4.10.7.4.6 Collectability.
- (4) Tax-exempt status and foundation status are based strictly on the laws that govern qualification for those statuses. Don't consider collectability when determining:
  - The continuation of tax-exempt status.
  - The appropriate foundation status.
- (5) Attempt to resolve issues as the examination progresses.
- (6) In arriving at conclusions:
  - a. Make an impartial evaluation of all evidence
  - b. Treat all taxpayers fairly and consistently
  - c. Correct mistakes made by the IRS
  - d. Refuse to take unfair advantage of taxpayer mistakes or ignorance.
  - e. Conclude all identified issues, as well as any issues raised by the taxpayer.
- (7) Examination findings and conclusions are to be clearly communicated to the taxpayer. Examiners will explain the issues and obtain the taxpayer's position on the examination issues:
  - a. Prepare preliminary examination report.
  - b. Hold closing conference with taxpayer, communicate findings.
  - c. Review / consider additional taxpayer information, if applicable.
  - d. Consider taxpayer position, if provided.
  - e. Determine if you need help on the issue(s).
  - f. Provide copies of work papers, if requested
  - g. Document workpapers CCR.
- (8) On agreed cases, request full payment of tax, penalties, and interest (if applicable):
  - a. If taxpayer indicates an inability to pay the tax due at closing or within 120 days of the first notice, alternative payment methods should be

discussed. An installment agreement should be offered if the taxpayer meets the requirements. See IRM 4.20.1.4, Installment Agreements.

- b. If the taxpayer and/or representative do not wish to pay the deficiency immediately, explain that a statement for the deficiency plus interest will be mailed. Their cancelled check will be their receipt. Encourage them to pay using EFTPS. If they must send a check instruct them to put the entity name, EIN, tax form number and tax period on the face of the check itself. Secure waivers as needed and close the case.

(9) On unagreed cases:

- a. Offer the taxpayer a managerial conference.
- b. Determine if the case is wholly or partially agreed.
- c. Solicit the taxpayer's position on unagreed issues.
- d. Tell the taxpayer about Fast Track Settlement (FTS), if eligible.
- e. Tell the taxpayer of the appellate process and their appeal rights.

(10) Leads sheets and workpapers are the written records that support the examination findings. They must include all the information necessary to support the examination results. Lead sheets and work papers:

- Provide a framework to plan the examination.
- Document the evidence gathered, examination steps and techniques applied, tests performed, information obtained, analyses conducted, and conclusions reached.
- Support the factual and technical conclusions.
- Provide a basis for review by management and other stakeholders (e.g., Appeals, Counsel, TIGTA, etc.).

**Note:** Examiners must contemporaneously update lead sheets and supporting workpapers during the examination. As issues are resolved, lead sheets and workpapers should be finalized and included in the case file.

**Note:** See IRM 4.10.7.4, Arriving at Conclusions, for information on arriving at conclusion of income tax examinations.

**Note:** See IRM 4.10.2.3.1, Large Unusual or Questionable (LUQ) Items Defined for information on tax deficiencies tolerances.

**Note:** Tolerances for IRC 4962 abatements require special disposal codes 18 (301) and 54 (304), unless higher disposal codes apply.

4.70.13.14.1  
(11-22-2023)  
**Proposing Changes in  
Tax or Status**

- (1) Critical to the examination process is on-going communication with the taxpayer or the taxpayer's authorized representative. Frequently discuss the progress of the examination and proposed issues with the taxpayer. This can lead to an early resolution of both the issues and the case.
- (2) Fully develop adjustments before presenting them to the taxpayer or representative for review.
- (3) Use tact when explaining proposed changes or pointing out errors in the taxpayer's books or records.

- (4) Be patient in explaining the provisions of the law, bearing in mind that what is clear to you may not be clear to someone who doesn't deal with exempt organizations in their occupation.
- (5) In change cases, provide a written summary of the issues to the taxpayer and representative. The written explanation must include a RAR, Form 886-A, and any form that shows the tax adjustment, if applicable.
  - a. In non-declaratory judgment cases, you can opt to prepare an initial RAR if you reasonably expect to secure an agreement before having to issue a 30-day letter and formal RAR. The initial RAR will contain sufficient information to allow the taxpayer and the representative to understand the issues and why you are proposing the adjustment.
  - b. EP/EO: In declaratory judgment issues, prepare a formal RAR. See IRM 4.70.14.2.1.1.
- (6) EP/EO/TEB: In potential revocation cases, discuss both the issues that jeopardize tax-exempt status and the impact on filing requirements, deductibility of contributions, income tax liability, IRC 403(b) plans, and any tax-exempt bonds.
- (7) Discuss substantive issues with the taxpayer or the representative. This meeting may be held via face-to-face meeting, or electronic conference, or telephone call.
- (8) Calculate any deficiency or over-assessment on the appropriate report forms. If you later discover an error in the report, you may mail a revised report to the taxpayer and.
- (9) Diligently secure timely responses from the taxpayer or representative.

4.70.13.14.2  
(11-22-2023)  
**Proposing Alternative Positions**

- (1) An "alternative position" is a secondary position the IRS may ultimately rely on if the primary position isn't upheld. You must address all alternative positions; Appeals won't raise them if they don't sustain the primary position. Therefore, thoroughly document the facts, law, taxpayer's position and conclusion for all alternative positions if the primary position isn't sustained.
- (2) If you are proposing an alternative position in an unagreed case, discuss it fully with the taxpayer or representative.
- (3) Present the alternative position at the end of Form 886-A, Explanation of Items, after the conclusion statement on the primary position. Label it as "Alternative Position" and follow the same issue, facts, law, taxpayer's position, government's position, and conclusion format.

**Example:** If proposing revocation and the Form 990-T is also under examination, develop the unrelated business income tax issue as an alternative issue in the revocation report. The proposed revocation letter will include Form 990-T at the heading.

- (4) Mark on top of the basic report forms for the alternative issue "ALTERNATIVE POSITION" and include them in the examination report after the conclusion of the primary issue.

**Example:** You discover an excessive amount of unrelated business income which places the main purpose of the organization into jeopardy. You propose

revocation as the primary issue and UBI as an alternative issue in the report. If the revocation position fails in Appeals, the IRS can pursue the UBIT issue.

4.70.13.14.3  
(11-22-2023)  
**Summary of the Issue  
Discussion**

- (1) The conference with the taxpayer or their representative includes:
  - An explanation of your findings based on the facts and current law.
  - An explanation of proposed adjustments.
  - An explanation of appeal rights.
  - A solicitation of agreements.
  - Answering any questions and concerns.
- (2) Each conference situation is unique and techniques vary widely, but there are basic procedures to follow.
- (3) The conference is held once the examiner reaches conclusions on all issues.
- (4) Conferences will be productive if the taxpayer and representative are kept informed of the issues throughout the examination.
- (5) Conferences may be followed by a “managerial conference(s)”, which can be held anytime until the case closes. Managerial conferences are applicable primarily because the group manager did not attend the closing conference.
- (6) There can be more than one conference, and managerial conference.
- (7) Propose and discuss substantive issues with the organization or a representative in a face-to-face meeting. If economically unfeasible, hold a conference call.

**Example:** You are conducting an examination of organization A located in a remote location, where in addition to flying to the closest large city, you drove for an additional six hours to get to your destination. After spending a week reviewing the records of the organization, you hold a conference. You inform A that aside from an agreed employment tax assessment for unreported employee fringe benefits, the case will close as a change to a related return. Later, back at the office, your manager rejects the case back to you to change the examination results. You may hold any subsequent conference by phone.

- (8) Don't issue an examination report to a taxpayer without discussing findings and issues with the organization or representative. Exceptions to this rule are for the following:
  - No-show / no-response appointments
  - Uncooperative taxpayers
- (9) **For field exams/office interviews:** You can mail subsequent reports to the organization rather than presenting it in person.
- (10) To facilitate discussion at conferences, you can provide the organization with a listing of items to be discussed.
- (11) Choose the order in which issues will be presented at the conference. You can modify the order during the conference. While there is no “right” order which is

best for all occasions, resolve factual issues or issues involving an established application of law first. Discuss less certain issues last.

- (12) Conferences vary in the degree of formality. See the table below for areas to be covered:

		<b>Steps to take during the conference:</b>
1)		Discuss your findings with the organization or representative. <b>Note:</b> Be prepared to converse knowledgeably, explain proposed adjustments and provide the taxpayer with copies of relevant court cases, regulations, revenue rulings, revenue procedures, and workpapers showing computations. Instructions to returns and publications that explain and support regulations and rulings are also helpful, but are not citable as legal precedent.
2)		Provide the organization or representative with the authority for your findings (law, argument, and conclusion.)
3)		Address any concerns from the organization or representative. Listen to the organization's officers / trustees / directors / representative(s). Get a clear understanding from all persons present that there are no pertinent facts other than those of which you are aware. State "This is my understanding. . .," and then detail the facts as you understand them. "Are we all in agreement on this? Are there any other material facts or circumstances of any consequence?"
4)		Solicit an agreement from the organization or representative. In the case of non-declaratory judgment issues, this can be done by issuing an initial RAR where you reasonably expect an agreement. At the group's discretion an initial report may be bypassed in favor of issuing a formal RAR with 30-day letter, either at the conference, or after the conference by certified mail.
5)		On agreed tax cases, solicit payment of tax, penalties and interest. For agreed revocations and disqualifications you can solicit income tax returns generally allowing up to 30 days, but you are not required to hold the primary return case file waiting for the returns. See IRM 4.70.14.2.1.3.3.1.1 for agreed adverse status changes.
	a)	If the organization indicates an inability to pay the tax due at closing, discuss alternative payment methods. Offer an installment agreement if the organization meets the requirements. Use Form 9465, Installment Agreement Request, to solicit a payment agreement. See IRM 4.70.14.2.1.3.1.4.6 for more information.

	b)	If the organization or representative agrees with the findings, but can't pay the deficiency immediately, explain that a statement for the deficiency plus interest will be mailed. Their cancelled check will be their receipt. Secure appropriate waivers and close the case.
6)		On unagreed cases:
	a)	Offer the organization a managerial conference. Also ensure the group manager's contact information is on the 30-day letter.
	b)	Determine if the case is wholly or partially agreed.
	c)	Solicit the organization's position and basis in law for unagreed issues.
	d)	Advise the organization of the appellate process and its appeal rights.
	e)	You can issue a formal 30-day letter and RAR at the conference or after the conference by certified mail.

- (13) Document the conduct of a conference and managerial conference on the case chronology record or activity record. Summarize the main result of the conference. If a conference was not held, explain why not on the CCR. Details of the conference can be explained in the workpapers.

## Exhibit 4.70.13-1 (11-22-2023) EO Delinquent Return Checksheet

This Delinquent Return Checksheet applies to both MF and NMF delinquent returns.

Delinquent Return Checksheet	
<input type="checkbox"/> <b>Liable For Return</b> <input type="checkbox"/> Filing Requirement <input type="checkbox"/> Already on INOLES/BMFOLO <input type="checkbox"/> Not present on INOLES/BMFOLO <input type="checkbox"/> Form 2363-A completed <input type="checkbox"/> Sent Form 2363-A to the FAST	<input type="checkbox"/> <b>Present on the delinquent return:</b> <input type="checkbox"/> Name of taxpayer <input type="checkbox"/> Address of taxpayer <input type="checkbox"/> Taxpayer Identification Number <input type="checkbox"/> Taxable period <input type="checkbox"/> Original dated signature <input type="checkbox"/> Received date stamp
<input type="checkbox"/> <b>Payment received:</b> <input type="checkbox"/> One Form 3244-A for each tax period  <input type="checkbox"/> Copies of check remittance <input type="checkbox"/> Sent originals to the Ogden Campus Cashier in 24 hours (for MF and NMF accounts). Do <b>not</b> send to the FAST. <input type="checkbox"/> Overnight delivery	<input type="checkbox"/> <b>Written on the top margin of delinquent return:</b> <i>"Delinquent Return Secured by TE/GE"</i>
<input type="checkbox"/> <b>Form 3244-A:</b> <input type="checkbox"/> EIN / SSN <input type="checkbox"/> MFT / Form number <input type="checkbox"/> Tax period <input type="checkbox"/> Received date (remittance) <input type="checkbox"/> Taxpayer name and address <input type="checkbox"/> TC 610 / TC 670 <input type="checkbox"/> TC 570 for .00 <input type="checkbox"/> Total payment  <input type="checkbox"/> Prepared by examiner name, group info, and phone number <input type="checkbox"/> Remarks: Split Remittance (if applicable) <input type="checkbox"/> Remarks: Check # and amount	<input type="checkbox"/> <b>Copy of return package retained for case file</b>  <input type="checkbox"/> Scanned and uploaded to RCCMS <input type="checkbox"/> Established on RCCMS (if examining)
<input type="checkbox"/> <b>Stapled to the front of each delinquent return:</b> <input type="checkbox"/> Form 13133	<input type="checkbox"/> <b>Form 13133:</b> <input type="checkbox"/> Examiner name/Address/Phone number <input type="checkbox"/> CCC Code D (if applicable) <input type="checkbox"/> CCC Code J (if applicable) <input type="checkbox"/> CCC Code R (if applicable) <input type="checkbox"/> CCC Code X (if applicable)  <input type="checkbox"/> <b>Form 3198-A:</b> <input type="checkbox"/> Examiner name / ID # / Phone # / PBC # / Group # <input type="checkbox"/> TIN / MFT / Period(s) ended <input type="checkbox"/> Earliest ASER (of all modules) <input type="checkbox"/> Taxpayer name / Name control <input type="checkbox"/> Form 2363-A date sent to the FAST <input type="checkbox"/> Delinquent return (if applicable)



**Exhibit 4.70.13-1 (Cont. 1) (11-22-2023)****EO Delinquent Return Checksheet**

<input type="checkbox"/> Form 3198-A	<input type="checkbox"/> Other instructions: Indicate "Assess Delinquency Penalty", or " <i>Do Not Assess Delinquency Penalty - Reasonable Cause Established</i> "
<input type="checkbox"/> Copy of Form 3244-A & remittance (assuming payment was processed before submitting delinquent return)	
<input type="checkbox"/> <b>Delinquent Return Package sent to FAST</b>	

**Exhibit 4.70.13-2 (11-22-2023)**  
**EO Computer Condition Codes**

CCC	MEANING	USE IF	FOR FORMS
A	No Estimated Tax Penalty	Form 2220, <i>Underpayment of Estimated Tax by Corporations</i> , or acceptable substitute statement is attached which shows no liability for the Estimated Tax Penalty on Line 43, (or Line 17 if Page 2 is missing).	990-PF 990-T
B	Termination of Installment Sale	Form 6252, <i>Installment Sale Income</i> , is attached and there is an indication the organization is terminating its installment plan.	990-T
D	Reasonable Cause for Failure to Pay Taxes Timely	Untimely paid return and reasonable cause is established. If prepaid penalty is included, Don't use Condition Code 0. See Figure 3.11.12-6.	990-PF 990-T 4720
F	Final Return	Note such as "Final", "Out of Business," etc. is on the return or attachments. See IRM 12.1.31.	990 990-EZ 990-PF 990-T Form 1041-A 4720 5227
I	Futures, Contracts, & Tax Straddles	Form 6781, <i>Gains and Losses from Section 1256 Contracts and Straddles</i> , is attached Identifying income or loss from futures, contracts, and tax straddles.	990-T
L		Form 8833, <i>Treaty-Based Return Position Disclosure Under Section 6114 or 7701(b)</i> , is attached and/or <u>Section 6114 Election</u> on face of return.	990 990-EZ 990-T
O	Module Freeze	Form 4466, <i>Corporation Application for Quick Refund of Overpayment of Estimated Tax</i> is attached.	990-PF 990-T
R	Reasonable Cause for Failure to File Return Timely	The filer has attached reasonable cause for failure to file timely or FTP not applicable. See Figure 3.11.1	990 990-EZ 990-PF 990-T 1041-A 4720 5227
T	Tax Shelter Registration	Form 8271, <i>Investor Reporting of Tax Shelter</i> is attached.	990 990-EZ 990-PF 990-T

**Exhibit 4.70.13-2 (Cont. 1) (11-22-2023)**  
**EO Computer Condition Codes**

CCC	MEANING	USE IF	FOR FORMS
U	Unprocessable	You can't perfect a numbered document from Information present.	990-PF 990-T 1041-A 4720 5227 5578 5768
V	Suppress Daily Delinquency Penalty	The return is delinquent and the filer has attached reasonable cause. See Figure 3.11.12-6	990 990-EZ 990-PF 1041-A
W	Cleared by Statute	Statute has cleared the return and it is a true statute return. See IRM 12.1.44.	990 990-EZ 990-PF 990-T 1041-A 4720 5227
X	Module Credit Freeze	The filer wants the over payment to be applied to another account ( <i>i.e.</i> , Information for two tax years on the same return.	990-PF 990-T 4720
Y		Short Period for Change of Accounting Period The return had a short year because of a change in accounting period but not on an initial or final return. See IRM 12.1.41	990 990-EZ 990-PF 990-T 1041-A 4720 5227
7	Reasonable Cause Was Considered and Denied	The Reasonable Cause statement wasn't acceptable. See IRM 3.11.12 Figure 3.11.12-6.	990 990-EZ 990-PF 990-T
8	Estimated Tax Penalty Exception	The filer meets the exception by annualizing income. (May be claimed in a letter with an attached worksheet or Form 2220 with Part 1 Box 1 checked.) Also used when Form 990-T, Line 37, Proxy Tax, contains an amount	990-PF 990-T
9	Low Income Housing	The following Form(s) are attached: Form 8611, Form 8693, Form 8609 /Schedule A, Form 8586 with a credit on line 4. (Exception: If credit is shown only on Line 5 of Form 8586 Don't enter CCC 9.) See IRM 3.11.12 Figures 3.11.12-15 or 16.	990-T

## Exhibit 4.70.13-3 (11-22-2023)

### EO Establishing Form 4720-A on RCCMS

If a secured delinquent Form 4720-A requires an examination, or If you are preparing an SFR, establish examination controls on RCCMS and on the NMF (manually).

In preparing a delinquent return, the organization manager, disqualified person, self-dealer, donor or donor advisor, completes Part II-A of Form 4720. When processed, the Form 4720 will be designated a Form 4720-A, MFT 66.

#### Step 1: Establish Controls on RCCMS

On RCCMS, select **Action, New Compliance Activity**.

On the <b>General (1 of 2)</b> tab:	
<b>Field:</b>	<b>Entry:</b>
<b>Validate for</b>	Select <b>Establish</b> .
<b>Update AIMS</b>	Do NOT check the box.
<b>TIN</b>	Enter the SSN or EIN. Don't add a V or a P
<b>Name</b>	Input the taxpayer's name.
<b>Type</b>	Select <b>4720-A Return</b> .
<b>Activity code</b>	Select <b>334</b> for individuals.
<b>Tax period</b>	Enter the tax year, using the taxpayer's fiscal year, not that of the charity or foundation.
<b>Return due</b>	The return is due 4½ months after the end of the taxpayer's tax year.
<b>Return received date</b>	Complete this for secured delinquent returns.
<b>Statute</b>	Enter the appropriate statute date based on the filing of the related Form 990, Form 990-EZ, or Form 990-PF.
<b>Alpha day</b>	Select EE if the following applies: The Form 4720-A is an SFR, <b>and</b> the Form 990, Form 990-EZ, or Form 990-PF is unfiled. (Reminder: Form 990-N doesn't start the running of the statute of limitations.)

On the <b>Codes</b> tab:	
<b>Field:</b>	<b>Entry:</b>
<b>Name control</b>	
<b>Master file type</b>	Select NMF
<b>MFT code</b>	Select 66.
<b>Project code</b>	Use the code of the Form 990/EZ/PF case.
<b>Source code</b>	Select <b>44</b> for substitutes for return, <b>13</b> for a secured delinquent return.
<b>Status code</b>	Select the appropriate code.

**Exhibit 4.70.13-3 (Cont. 1) (11-22-2023)**  
**EO Establishing Form 4720-A on RCCMS**

<b>Field:</b>	<b>Entry:</b>
<b>Class</b>	Select 1 for private foundation related cases, 2 for public charity related cases.
<b>Activity grade</b>	Use the grade of the foundation/charity case.
<b>Estate return</b>	Select the appropriate code, typically <b>1</b> .
<b>Push code</b>	For secured delinquent returns, select <b>020</b> . For substitutes for return, select <b>036</b> . If a return has already posted, leave this blank.
<b>Return requisition code</b>	Select <b>3</b> .

Save the activity and perform a send/receive.

**Step 2: Establish the Form 4720-A on Non-Master File (NMF)**

Complete Form 5588, *TE/GE NMF Request*. Refer to the instructions to Form 5588 in IRM Exhibit 4.5.1-10 and IRM 4.5.1.3.8.4.

Submit completed Form 5588 via secure e-mail to your group manager for signature. The manager then e-signs the form and forwards it to their IDRS clerk/secretary for input.

**Exhibit 4.70.13-4 (11-22-2023)**

**EO Reasonable Cause Criteria**

**Reasonable Cause Criteria**

Reasonable cause is based on all of the facts and circumstances in each situation and allows the IRS to provide relief from a penalty that would otherwise be assessed. Reasonable cause relief is generally granted when the taxpayer exercises ordinary business care and prudence in determining their tax obligations but is unable to comply with those obligations. When determining whether there was reasonable cause for the delinquent filing, the examiner should carefully consider the factors described in IRM 20.1.8-3.

In accordance with Policy Statement 32 (Formerly P-2-7), if clearly established by the taxpayer, the following six specific causes for failure to file a return within the prescribed time will be accepted as reasonable cause. However, based on the facts and circumstances, the examiner isn't limited to these criteria in determining reasonable cause.

- a. Death or serious illness of the taxpayer or a death or serious illness in his/her immediate family. In the case of a corporation, estate, trust, etc., the death or serious illness must have been of an individual having sole authority to execute the return or make the deposit or payment or of a member of such individual's immediate family.
- b. Unavoidable absence of the taxpayer. In the case of a corporation, estate, trust, etc., the absence must have been of an individual having sole authority to execute the return or make the deposit or payment.
- c. Destruction by fire or other casualty of the taxpayer's place of business or business records.
- d. Taxpayer was unable to determine amount of deposit or tax due for reasons beyond the taxpayer's control. However, this cause will be acceptable for taxpayers required to make deposits or payments of trust fund taxes only when the taxpayer was unable to have access to his/her own records.
- e. The facts indicate that the taxpayer's ability to make deposits or payments has been materially impaired by civil disturbances.
- f. Lack of funds is an acceptable reasonable cause for failure to pay any tax or make a deposit under the Federal Tax Deposit System only when a taxpayer can demonstrate the lack of funds occurred despite the exercise of ordinary business care and prudence.

In accordance with Policy Statement 3-3 (Formerly P-2-9), if clearly established by the taxpayer, returns mailed by taxpayers in foreign countries will be accepted as timely if postmarked on or before midnight of the last date prescribed for filing, including any extension of time for such filing. If the last day for filing falls on a Saturday or Sunday, returns will be considered timely if postmarked on or before midnight of the next day.

Additional criteria to be considered include:

- a. The return was timely mailed. A return is considered mailed in time if the date of the postmark stamped on the envelope falls on or before the due date. If the due date falls on Sunday or a legal holiday, the following business day is within the legal period.
- b. The return was timely filed but to an inappropriate Internal Revenue Service office.
- c. The delay or failure to file was due to erroneous information given the taxpayer by an Internal Revenue Service office or employee.
- d. The return was filed late because the Internal Revenue Service failed to provide the proper returns, timely requested by the taxpayer, in sufficient time to permit the executed return to be filed on or before its due date.
- e. The delay was caused because of the inability of the taxpayer, through no fault of its own, to meet with a representative of the IRS, because a representative wasn't available, at an Internal Revenue Service office, for the purpose of securing information or assistance to properly complete its return.

**Exhibit 4.70.13-4 (Cont. 1) (11-22-2023)****EO Reasonable Cause Criteria****Reasonable Cause Criteria**

Three additional circumstances constitute reasonable cause for failure to file a return by certain kinds of exempt organizations. An organization must meet all of the following criteria:

- a. It isn't a private foundation, 990-PF filer, or other taxable exempt organization, such as those receiving income from business unrelated to the business for which the exemption was granted, 990-T filer.
- b. It is a membership organization.
- c. It has no full-time employee responsible for administering the organization's finances.

A private foundation has reasonable cause if it meets the requirements of Rev. Proc. 79-8, 1979-1 C.B. 487. This revenue procedure states that a private foundation has reasonable cause for failure to file and failure to pay for 90 days after it received a determination letter from the IRS, stating that the organization is a private foundation or that it can't reasonably be expected to be a public charity. This relief applies for a taxable year only if all of the following exist:

- a. The organization filed Form 1023, *Application for Recognition of Exemption*, before the due date for filing the Form 990-PF in question.
- b. The organization claimed it was a public charity and not a private foundation as described in IRC 509(a).

This relief doesn't apply to returns or schedules that would otherwise have been due, for example Form 990-T.

A private foundation meets the requirements of Rev. Proc. 79-8 if all of the following exist:

- a. The foundation files all returns due no later than ninety days after the date of the determination letter.
- b. The foundation pays all taxes and interest due on those returns within 90 days after the date of the determination letter.
- c. The foundation attaches a statement to the returns explaining the basis for reasonable cause.



**Exhibit 4.70.13-5 (11-22-2023)**  
**EO Computer Code Locations**

<b>If Form is</b>	<b>The FAST will edit the computer condition code (CCC)</b>
11-C	Middle of the page, to the right of the address
730	To the right of the EIN
940	In the middle of the bottom of the page
941	Near the bottom of the form to the right of "You must complete both pages of Form 941 and SIGN it"
943 /945	In the middle of the bottom of the page (below the privacy act statement)
944	On the bottom of the return at the end of "You must fill out both pages of the form 944 and sign it" line
990 (2007 and Prior)	In Part I on the dotted line on line 1a
990 (2008 Revision)	In Part 1 on the dotted line on line 4
990-EZ	In Part 1 on the dotted line on line 1
990-PF	In Part I on the dotted line on line 9
990-T	In Part I on the dotted line on line 3
1041	In the middle of the dotted line on line 2a
1041-A	In the Entity section above the Employer identification number and below the OMB No.
1065	In the middle of the dotted line on line 1b
1120	In the middle of the dotted line on line 3
1120-C	In the middle of the dotted line on line 9
1120-POL	In the middle of the dotted line on line 2
1120-S	In the middle of the dotted line on line 3
4720	To the right of the tax year
5227	Part 1 on the dotted line on line 2a
8038	Part II, in the middle of the dotted line on Line 11a
8038-CG	Part II, in the middle of the dotted line on line 9a
8038-G	Part II, in the middle of the dotted line on Line 12
8038-T	Part II, on the dotted line on line 12
8872	On line B, to the right of "final report"

